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No. 94-1630

In The

Supreme Court of the United States

October Term, 1994

NATIONAL AMUSEMENTS, INC.,

Petitioner,

vs.

TOWN OF DEDHAM,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the First Circuit Court of Appeals correctly sustained the District Court's application of the standard of review for summary judgment in ruling that the petitioner failed to establish the existence of a dispute as to any material issue of fact.

2. Whether the First Circuit Court of Appeals correctly sustained the By-Law in question as a content neutral time, place or manner regulation, narrowly drawn to serve significant government interests, which leaves open ample avenues of communication.

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Citations ii

Statutory Provisions Involved 1

Statement of the Case 1

A. Procedural History 1

B. The Record Below 5

Reasons for Denying the Writ 11

I. There are no genuine issues of material fact as to a substantial governmental interest or otherwise. . . 11

II. There is no conflict between the decision below and the decisions of this Court, the Ninth or the Eleventh Circuits. 19

Conclusion 23

TABLE OF CITATIONS

Cases Cited:

Acorn Investments, Inc. v. Seattle, 887 F.2d 219 (9th Cir. 1989) 21, 22

Contents

Page

Avalon Cinema Corp. v. Thompson, 667 F.2d 659 (8th Cir. 1981) 13, 20

Baseardones v. Galviston, 682 F.2d 1203 (5th Cir. 1982) . 13

Carey v. Brown, 447 U.S. 455 (1980) 11, 24

Celetex Corp. v. Catrett, 477 U.S. 317 (1986) 18

Church of Lukimi Babalu Ave. Inc. v. City of Hialeah, __ U.S. __, 113 S. Ct. 2217 (1993) 16

City of Boston v. Back Bay Cultural Association, 418 Mass. 175 (1994) 15

Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984) 13, 21

Coalition v. City of Kenosha, 767 F.2d 1248 (7th Cir. 1985) 15

Edenfield v. Fane, __ U.S. __, 113 S. Ct. 1792 (1993) 13, 19, 20, 21

Fantasy Book Shop, Inc. v. City of Boston, 652 F.2d 1115 (1st Cir. 1981) 15

Home Box Office v. FCC, 567 F.2d 9 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977) 20

Jefferson v. Hackney, 406 U.S. 535 (1972) 17

Contents

Page

Krueger v. Pensacola, 759 F.2d 851 (11th Cir. 1985) 21, 22

Kuzinich v. Sonta Clara, 689 F.2d 1345 (9th Cir. 1982) ... 13

Leverett v. Pinellas Park, 775 F.2d 1536 (11th Cir. 1985) . 13

Los Angeles v. Preferred Communications, Inc., 476 U.S. 488 (1986) 20

McCleskey v. Kemp, 481 U.S. 279 (1987) 16

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979) 16

Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) 11, 12, 13, 20, 21, 23

Schad v. Borough of Mt. Ephraim, 452 U.S. 61 (1981) ... 13

754 Orange Ave., Inc. v. City of West Haven, 761 F.2d 105 (2nd Cir. 1985) 20

Turner Broadcasting System, Inc. v. FCC, __ U.S. __, 114 S. Ct. 2445 (1994) 13, 18, 19, 20, 21, 23

Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977) 18

Ward v. Rock Against Racism, 491 U.S. 781 (1989) 11, 12, 13, 14, 19, 20, 21, 23

Contents

Page

Washington v. Davis, 426 U.S. 229 (1976) 16

Young v. American Mini Theatres, 427 U.S. 50 (1976) ..11, 15, 20

Statute Cited:

M.G.L. c. 140, § 181 2

United States Constitution Cited:

First Amendment 3, 12

Fourteenth Amendment 3

Rule Cited:

Fed. R. Evid. 104(a) 18

Other Authorities Cited:

Massachusetts Declaration of Rights, Article Sixteen ... 3

Town of Dedham By-Laws, Chapter XIII, Section 42 1

Town of Dedham By-Laws, Chapter XIII, Section 42A .. 1

Town of Dedham By-Laws, Chapter XIII, Section 57 1

Town of Dedham By-Laws, Chapter XXVII 1

Contents

Page

APPENDIX

Appendix A — Excerpt from the Record: Town Meetings Minutes, April 10, April 24, and November 6, 1989 ... 1a

Appendix B — Excerpt from the Record: February 5, 1993 Letter of Petitioner's Counsel 43a

Appendix C — Excerpt from the Record: By-Laws Restricting Late Night Commercial Activity 45a

STATUTORY PROVISIONS INVOLVED

In addition to constitutional provisions, statutes and municipal by-laws referenced by the petitioner, the following by-laws have been included in the Appendix hereto:

Section 42 of the Town's Revised By-Laws, Chapter XIII (Police Regulations), as amended in 1976, prohibits the retail sale of any food between the hours of 12:00 midnight and 6:00 A.M. (App., *infra*, 45a-46a).

Section 42A of the Town's Revised By-Laws, Chapter XIII (Police Regulations), as amended in 1979, prohibits retail establishments from the sale of any retail commodity (except fuel products) between the hours of 12:00 midnight and 6:00 A.M. (App., *infra*, 48a).

Chapter XXVII of the Town's Revised By-Laws, as amended in 1980, prohibits the illumination of signs for retail establishments beyond the normal business hours of the establishment to which it pertains, including retail establishments proscribed from operation under Sections 42 and 42A, *supra*. (App., *infra*, 50a-60a).

STATEMENT OF THE CASE

A. Procedural History

National Amusements, Inc. ("National") filed the Complaint giving rise to this action in order to prevent enforcement of and to invalidate a By-Law voted by the Town of Dedham ("the Town") at its Town Meeting on November 6, 1989 and subsequently approved by the Attorney General on February 8, 1990. The By-Law here in issue, Chapter XIII, § 57, provides that:

> Unless otherwise restricted, no holder of a license issued by the Town of Dedham pursuant to Massachusetts General Laws, Chapter 140, Sections 177A, 181 and 183A, shall permit any activity licensed thereunder to be conducted between the hours of 1:00 A.M. and 6:00 A.M.

(R. A46-48, ¶¶ 20, 21, 22, 23; A356, ¶ 27: A289-290). The licensing statutes cited authorize municipalities, in general, to grant and revoke licenses for automatic amusement devices, concerts, dances, exhibitions and public shows for which an admission fee is charged. (Petitioner's App. at 61a-69a).

In 1978, prior to the Town's adoption of the By-Law, National had commenced the regular exhibition of late evening movies ("late movies") on Friday and Saturday nights at the Showcase Cinemas, a cinema complex consisting of twelve theaters, owned and operated by National and located on Route 1 and Elm Street in the Town of Dedham. (R. A41 ¶ 1; A246). Dedham is a "bedroom" suburb of Boston, dissected by one commercial strip of highway, Route 1. Just west of Showcase Cinemas, Route 1 intersects Route 128, a major north-south suburban belt-way of Boston. (R. A539-40). Elm Street serves the entrance to the Cinema and also marks the line between National's complex and the residential neighborhood abutting the complex. (R. A1702). Residences are located on Elm Street. *Id.* The late movies usually started between 11:30 P.M. and 12:30 A.M., and ended between 1:00 A.M. and 2:30 A.M. (R. A42 ¶ 3; A347). Because National exhibits movies under a license issued by the Town pursuant to M.G.L. c. 140, § 181, National is subject to the Town's By-Law, and is prohibited by the By-Law from showing late night movies between the hours of 1:00 A.M. and 6:00 A.M. (R. A48 ¶ 24; A753-54; A755-73).

National's Verified Complaint ("Complaint") in this action, filed on or about February 28, 1990,[1] sought declaratory and injunctive relief, (R. A7, A15, A16), arising out of the Town's adoption of the By-Law, and set forth the following claims: (1) that the By-Law violated National's rights to free speech under the First Amendment to the United States Constitution and Article Sixteen of the Massachusetts Declaration of Rights[2] (Count I); (2) that the By-Law violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Count II), because it is "unfairly vague and ambiguous as to exactly what licensed activities are to cease by 1:00 A.M." (A13 ¶ 31); and (3) that the By-Law violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, (Count III), by restricting National's hours of operation, while permitting "other licensed *establishments,* including hotels and bars to remain open after 1:00 A.M.," (emphasis added) (A14 ¶ 35), and permitting "other licensed forms of *entertainment,* including cable television, to continue after 1:00 A.M." (A14 ¶ 36).[3]

On or about February 5, 1983, three years after filing its Complaint and after completion of informal discovery between the parties, National, by way of a third draft of proposed

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1. The By-Law became effective on or about February 28, 1990, but, in lieu of argument on a motion for preliminary injunction, the parties stipulated that the By-Law would not be enforced against National with respect to ten of its twelve theaters during the pendency of this litigation in the district court. (R. A48 ¶ 23, A357-58). National in turn, agreed not to show late movies in the remaining two of its twelve theaters during that period. *Id.*

2. National's claim under Article 16 was deemed waived by the district and appeals courts (Petitioner's App. 37a and 59a) and National has not pursued the claim in its petition.

3. National has not pursued these arguments in its petition.

stipulations of facts, for the first time sought to interject a claim that racial animus motivated the Town in adopting the By-Law.[4]

National's unpled and belated claim of a racial motive was no more than a thinly veiled attempt to raise the level of scrutiny applied to its claims to a strict scrutiny standard. That attempt failed because, as the district and appeals courts both found, the record is devoid of evidence that racial animus played any part in the adoption of the By-Law by the Town Meeting, a legislative body consisting of 270 representative Town Meeting members who held hearings and debated the matter. (Petitioner's App. 23a and 51a) (R. A57-A63 ¶¶ 62-96).

Rather, the undisputed evidence established that the By-Law in question is the last in a twenty year progression of by-laws designed to insure that commercial activities do not impinge on private, residential life, including the prohibition of the retail sale of food between the hours of 12:00 midnight and 6:00 A.M. (App., *infra,* 45a) (R. A49, ¶ 27; A428), a rollback of the closing time for licensed establishments which sell alcoholic beverages from 2:00 A.M. to 1:00 A.M. (R. A50, ¶ 29; A753-54, 774-75), the prohibition of the sale of any retail commodity (except fuel products) between 12:00 midnight and 6:00 A.M. (App., *infra,* 48a) (R. A49, ¶ 27; A428), and finally, in 1980, a by-law prohibiting the illumination of signs for retail establishments which were proscribed from operation under the earlier enacted by-laws. (App., *infra,* 50a-60a) (R. A49, ¶ 28; A429-35).

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4. In transmitting that third draft, National's counsel articulated the new assertions being pursued by him "since the Town of Dedham decided to push this case forward a few months ago" and stated that the new assertions should be discussed "prior to filing the stipulation in court" since "[o]nce the stipulation is filed, there may well be extensive press coverage and public scrutiny embarrassing to Town officials." (App., *infra,* 43a) (A57, ¶¶ 63-64; A126-52).

In addition, the undisputed record in this case reflects recurring citizen complaints to Town officials and to National, prior to adoption of the By-Law, relative to vandalism, noise, late hour traffic through residential neighborhoods, squealing tires, glaring headlights, trespassing through backyards and general late-hours disruption of the residential neighborhood adjacent to National's Showcase Cinema site (R. A51, ¶ 34; A412-14, ¶¶ 18, 19, 20; A347-48, ¶ 5; A360, ¶ 43; A161). The By-Law reasonably sought to address these complaints by limiting late night showings and their attendant detrimental effects on the neighborhood.

The district court granted summary judgment for the Town, 846 F. Supp. 1023 (D. Mass. 1994) (Petitioner's App. 39a-59a), and the Court of Appeals affirmed. 43 F.3d 731 (1st Cir. 1995) (Petitioner's App. 1a-38a).

B. The Record Below

In its zeal to demonstrate a dispute of material fact, National, in its petition, has mischaracterized the record in several critical instances. These mischaracterizations primarily center around National's racial animus claim. National's extensive deposition and discovery efforts as to essentially every person it could identify as having participated in the Town Meeting or the public debate of the proposed By-Law, yielded the single reference to race cited by National at page 5 of its petition. National at 4-5, argues from the single reference that, in 1988, "[t]he race issue immediately reared its head." However, the comment quoted was elicited during the deposition of an abutter to the cinema, taken almost four years after the 1989 adoption of the By-Law and subsequent to an intervening incident in 1991 involving the much publicized multiple stabbings of Showcase Cinema patrons by other patrons waiting for the late showing of *New Jack City* on

March 8, 1991. (R.A. 553-55 and March 29, 1981 *Boston Globe* article cited by National at 6).[5] The incident, however, could not have been a topic of discussion in 1988.

Nor does the record suggest that such comments were used by the abutter to "stir . . . up the neighborhood" as recited by National, at 5. Rather, the record cited by National (R. A1706-09) describes only the abutter's concerns about expansion of the cinema complex, additional traffic, crime, and security issues, some of which he had voiced to selectmen and police, *not to neighbors.* Moreover, the "false flyer" referred to by National, at 5, was, in fact, a document which listed Showcase Cinema incidents *exactly as they appeared on the police blotter,* and which was submitted *only to the Town Selectmen.* (R. A1706-09).

When National asserts, at 4, that "[t]he record in this case reflects that it was [racial] fear that caused Dedham to ban the Showcase 'midnight movies,' " it cites only its own tallies of patron attendance by race on several nights in the summer of 1993 with no indication whatsoever of any awareness by Town Meeting of the racial composition of late show audiences, or any reference whatsoever to race by the Town Meeting in its debate three years earlier.[6]

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5. The incident stands in sharp contradiction to National's representation at 9 n. 14 that suspension of enforcement of the By-Law against National "was in effect for 4 years and there is nothing in the record to suggest that Dedham is any the worse for it."

6. Significantly, the first investigation, and only evidence as to the racial composition of the cinema audience, was conducted by *National after* the adoption of the By-Law, and during the pendency of this litigation. The surveys National claims to rely upon were conducted as to audiences on several nights

(Cont'd)

In fact, Town Meeting emphasis on resident bargaining power by requiring National to satisfy promised traffic and security goals before coming back to the next Town Meeting for rescission of the By-Law, nullifies a theory of audience "lock-out". App., *infra*, 27a-28a, 30a-32a. *See also*, 26a.

> The vice president told us of all the things that had been done to satisfy the neighborhood and the town and all the things that they would try to do in the future. I'm sure that they will make every effort to keep their word. However, I would suggest to you, as Fred Johnson suggested, let's go ahead and keep what we voted in place. Keep what we voted two weeks ago in place and if National Amusements satisfies the needs of the residents in the town then next year I will come back here and I will ask that we rescind the action that we took two weeks ago.

(App., *infra*, 30a).

The litmus test that the focus of Town Meeting was to eliminate undesirable secondary effects, not a particular ordinance, was the expressed intention to bring back the late shows if and when those secondary effects had been controlled sufficiently to assure late night residential tranquility.

The only other contention of National's racial animus claim is its reliance on so-called "code words" — "people problems";

(Cont'd)

in the summer of 1993, four years after enactment of the By-Law. National has stated that there are no statistics as to racial attendance at the Showcase Cinemas or any attendance at late shows for the period 1988 and 1989, just prior to passage of the By-Law. (R. A62, ¶92), (R. A350, 646-48).

"young kids who don't even live in Dedham" — which National has, in its petition, *e.g.*, 6, elevated to the designation of "racial slurs," although none of the phrases refer in any manner to race, explicitly or in the context from which these "snippets . . . extracted from the record with near-surgical precision" (Petitioner's App. 24a), are taken. *See* App., *infra*, 3-4a, 6a, 26a. The entire transcript of Town Meeting debate has been provided at App., *infra,* 1a-40a.

National's assertion at 6-7, that the premise of some speakers at Town Meeting that patrons of National's mega-complex consist mainly of "out-of-towners," *see* App., *infra,* 26a, "could only reflect a visible difference like skin color" ignores the undisputed record and common knowledge that Showcase Cinema's twelve screens exhibit the same movies about twelve or thirteen hours a day, seven days a week, a volume certainly calculated to saturate more than the Town of Dedham's small population. (R. A63-64, ¶¶ 97, 98; A637-43). Furthermore, National's Vice President acknowledged that the Cinema draws from at least ten suburban and urban areas of Boston, including Dedham, Westwood, Norwood, Canton, Stoughton, West Roxbury, Roxbury, Mattapan, Needham and Milton. (R. A1588).

When National, at 13-14, finds racism in one speaker's desire "to get the trouble out of town earlier," National ignores the context in which the speaker argued to Town Meeting that "[t]welve-thirty is a very reasonable time for the parking lots to be emptied out and the people to go home." App. *infra,* 6a.

> It's going to get the trouble out of Town earlier. Perhaps its only a by-law, as Mr. Reid says, but it's a start. It shows that the people at the cinema that they're going to have to work with the area residents, and that they're going to have to get along and be good neighbors.

App., *infra*, 6a. A447.

National truly is a "neighbor" to local residents. When National suggests to the Court at 11, n. 17, that an activity that draws hundreds of late-night patrons is acceptable at 2 A.M. because the area is commercially zoned, it neglects to add record evidence that "[e]very car that enters and exits the Showcase Cinemas property does so on Elm Street or via their rear entrance onto the dirt road." (R. A1702). Property across Elm Street from National consists of single family homes, marking the beginning of the residentially zoned neighborhood immediately abutting National's theatre. *Id.*

National, in its Complaint (R. A10, ¶ 10), concedes that, prior to adoption of the By-Law, its representatives "met with Town of Dedham residents on five separate occasions" and "proposed and developed plans to alleviate any articulated concerns pertaining to traffic, noise and security at or around the Showcase Cinemas complex." National, in addressing the Town Meeting prior to adoption of the By-Law, App., *infra*, 17a-22a, 35a-39a, emphasized its efforts to address the cinema's impact on the neighboring community, including neighborhood patrols, police details, and security measures. (R. A45, ¶ 14; A52, ¶ 37; A353, ¶ 18: A219-22; A43-45, ¶¶ 8, 10-13). However, despite National's efforts, as to which the Town Meeting was fully briefed, App., *infra*, 16a, 19a-21a, 39a (R. A464-67, A493-94), neighbors continued to petition their legislators for passage of the By-Law in question to combat their experiences of theater patrons urinating on lawns, roaring cars up and down residential streets, turning in driveways and shining headlights in homes. (R. A51, ¶ 34, R. A52, ¶ 38, R. A52-53, ¶ 39).

Despite this record, National claims, at 6, that it "successfully implemented" a program responsive to neighbors concerns and asserts, at 8, that noise and "cutting through the

neighborhood" were "eliminated" by posting a "Dead End" sign. National cites for this proposition testimony of a neighborhood resident, Mr. Cedrone, who testified, however, that the cut-through problem was "alleviated", *not "eliminated"*, and Mr. Cedrone added "you'll get different opinions from people who live on that main drag." (R. A1009).

In fact, Mr. Cedrone, as Chairman of the Poor Farm Committee, (a liaison between National and neighbors formed to address problems generated by Cinema activity) described at the April 24, 1989 Annual Town Meeting

> "more people coming out of the late show cutting through the neighborhood, cutting through back yards. The eldery people still can't get used to that, even with the extra police protection." * * * "At 12:00 they're showlng movies, you're in bed. When most of you people are in bed, sleeping, you've got that serenity, you can sleep, there's no problem. The people in this neighborhood got to go to sleep. If they hear a noise outside, they're awake. They're sleeping on eggs out there."

App., *infra*, 24a-25a (R. A52-53, ¶ 39, A363, ¶ 52; A472).

Mr. Cedrone's statement encapsulizes the well recognized government interest in preserving the peace and tranquility of the home. A limited time restriction could not be a more reasonable and appropriate response to that need. The By-Law here is a classic time, place or manner regulation, demonstrated by the record to be narrowly tailored to serve the well recognized governmental interest of preserving the peace and tranquility of the home, in this instance by insuring a period of peace and quiet

from commercial activity during the early hours of the morning between 1:00 and 6:00 A.M. Accordingly, summary judgment for the Town was properly sustained.

REASONS FOR DENYING THE WRIT

I.

THERE ARE NO GENUINE ISSUES OF MATERIAL FACT AS TO A SUBSTANTIAL GOVERNMENTAL INTEREST OR OTHERWISE.

The By-Law in question was enacted as part of a twenty year on-going effort by Town Meeting to preserve peace and tranquility for Town citizens during the late evening hours. (*See* p. 4, *supra*). App., *infra,* 45-60a. This Court has observed that government's "interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society," *Carey v. Brown,* 447 U.S. 455, 471 (1980), and has also emphasized that the scheme of licensing and other regulation of commercial entertainent are acknowledged and accepted applications of the time, place and manner doctrine to entertainment. *Young v. American Mini Theatres,* 427 U.S. 50, 62-62 (1976).

The crux of National's grievance is with this Court's ruling, as paraphrased by the Court of Appeals, that "a legislative body, acting in furtherance of the public interest, is entitled to rely on whatever evidence it 'reasonably believe[s] to be relevant to the problem' at hand" when the focus of legislation is the secondary effects of entertainment or other speech. Petitioners App. 21a-22a, citing *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) and *Ward v. Rock Against Racism,* 491 U.S. 781, 800 (1989).

The standard, as articulated and applied in *Renton* and *Ward*, presents not a "fact issue," as National, at 12, asserts without supporting authority, but rather a mixed question of law and fact, requiring the Court to examine the record before the legislative body without adjudicating or requiring the legislature to independently corroborate each incident brought to its attention. Petitioner's App. 21a. *See Renton* at 51-52 ("[t]he First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities so long as whatever evidence the city relies upon is resonably believed to be relevant to the problem that the city addresses"); *Ward* at 800 (a city's substantial interest in limiting sound volume was satisfactorily "evidenced by the complaints about excessive volume generated by respondent's past concerts").

Consistent with that standard, the Court of Appeals found that, in addressing problems of crime, litter, and noise posed by late-night commercial entertainment activities, the Town "had ample reason to assume that the collocation of factors on display at the Town Meeting — recurrent, wide-ranging complaints lodged by residents, constabulary concern with a pattern of incidents reasonably believed to have occurred in connection with the exhiition of midnight movies, and a common sense realization that the placidity of a residential community will be jeopardized by an activity that regularly draws hundreds of late-night patrons, most in automobiles, who must then depart in the early morning hours — were relevant to, and probative of, its assessment of the problem." Petitioner's App. 22a.

With an eye, perhaps, to the envelope surrounding its profit potential in the cinematic sector, National, at 16, dreads that "any late night First Amendment activity with an appreciable public facet is vulnerable to a ban." The simple answer to National is that this case does not present a "ban", and reasonable restrictions on

the time, place or manner of protected expression will be upheld so long as they are content neutral, narrowly drawn to serve a significant governmental interest, and allow for reasonable alternative channels of communication. *Ward v. Rock Against Racism, supra,* at 791; *Renton v. Playtime Theatres, Inc., supra,* at 50; *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). Both the district and appeals courts found that each of the stated elements were satisfied by the subject By-Law. Petitioner's App. 30a and 59a.

Turner Broadcasting System, Inc. v. Federal Communications Commission, __ U.S. __, 114 S. Ct. 2445 (1994) and *Edenfield v. Fane*, __ U.S. __, 113 S. Ct. 1792 (1993), relied upon by the petitioner, require no more. Both merely looked for concrete experiences to support the abstract governmental interests put forward in those cases and found none on the record. (*See* further discussion at p. 19, *infra*).

Here, the evidence of direct experiences by town residents is not only real and substantial but, in the language of the Court of Appeals, "overwhelming."[7] Petitioner's App. 22a n. 10. *See* Petitioner's App. 19a-20a, describing certain "key pieces of evidence."

The By-Law, effectively eliminating opportunities for

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7. Petitioner's reliance on the cases cited at 13, n. 18 is, therefore, inapposite. Those cases are conspicuous in their lack of supporting experiences, *Baseardones v. Galviston*, 682 F.2d 1203 (5th Cir. 1982); *Avalon Cinema Corp. v. Thompson*, 667 F.2d 659 (8th Cir. 1981); *Leverett v. Pinellas Park*, 775 F.2d 1536 (11th Cir. 1985), the direct articulation on the record of an impermissible motive to suppress the content of adult entertainment, *Leverett v. Pinellas Park, supra; Kuzinich v. Sonta Clara*, 689 F.2d 1345 (9th Cir. 1982), or the complete absence of even a rational basis for the singling out of communicative activities. *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981).

disruptive and unruly behavior on the part of National's patrons during the early morning hours, reflects a common-sense approach to addressing the recurring complaints of neighbors relating to late-night noise, vandalism and disruption. *Ward*, 491 U.S. at 801 (absent this requirement, the City's interest would have been served less well, as is evidenced by the complaints . . . generated by respondent's past concerts").[8]

National, at 3 and 7, claims that complaints made by citizens in 1989 of squealing tires, trespassing through back yards, noise, litter and general late hour disruption of the neighborhood were "recanted or materially modified" at depositions in 1993. National's citation to the record, however, shows nothing of the sort. *See* petition at 7-9. In fact, National's reference at 8 n. 9 to the details of various occurrences from compilations of police reports — a so-called "lug-nut" incident where all four wheels were removed from a car and a so-called "jacket" incident where youths were stripped of their jackets at knife point (*see* App., *infra*, 26a) — confirms such incidents while quibbling as to the hours or day of their occurrence and with the legislative determination that secondary effects of National's business experienced during the day and evening hours need not be perpetuated into the wee hours of the night. Contrary to National's contentions, at 9 n. 12 and 8 n. 10, late-show patrons need not be *more* boisterous than early show patrons to be more problematic at 2:00 A.M. and the noise and disruption of 350 exiting cars at 2:00 A.M. pose a far different burden to a residential neighborhood than the same activity does at noon.

At some hour of the night, privacy interests must become paramount. *See Wisconsin Action Coalition v. City of Kenosha,*

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8. Indeed, the Town might argue (though under the applicable standard it is not required to do so) that adoption of the By-Law may well reflect the *only* realistic method of protecting Town citizens from late-night noise and disruption, given other unsuccessful efforts.

767 F.2d 1248, 1258-59 (7th Cir. 1985) ("City's interest in protecting the privacy and peace of its residents increases (perhaps geometrically with the lateness of the hour.")). The Town Meeting reasonably determined such hours to be from 1 A.M. to 6 A.M., consistent with its past regulations of commercial activities designed to afford a period of residential sleep and respite. App., *infra*, 40a.[9]

It appears that, three years into the litigation, the agreed statement of facts proposed by the Town, analyzed in this context of existing law concerning reasonable "time, place or manner" restrictions, apparently stirred in National a sense of desperation,

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9. Nor is the By-Law overbroad in its application to other businesses, as asserted by petitioner at 17 n. 22. The By-Law, on the basis of the Town's actual experience of the secondary effects of Showcase Cinemas' operations on the surrounding residential community, identifies a class of licensed commercial activities which, by their nature, are intended to draw crowds of people. The form of entertainment is irrelevant; all can reasonably be expected to produce secondary effects similar to those which so negatively affected the neighborhood surrounding Showcase Cinemas. Regardless of the noisiness of a particular form of entertainment in and of itself, if enterainment is promoted as a commercial activity to earn admission fees, Petitioner's App. 61a-69a, that activity poses problems associated with all commercial activities which need to draw certain numbers of people in order to be profitable. These secondary effects are particularly burdensome in the late hours of the night and early hours of the morning, interfering with neighbors' sleep and the late night tranquility residents in a suburban community expect. Thus, because here the focus is on "secondary effects," the charge of a fee in anticipation of sufficient crowds to justify the commercial enterprise is precisely relevant to a narrowly tailored by-law protective of residents' interests, "and since the market for [such amusements] as a whole is 'essentially unrestrained,' the regulation . . . is not broader than essential to the furtherance of those interests." *Fantasy Book Shop, Inc. v. City of Boston*, 652 F.2d 1115, 1121 and n. 6 (1st Cir. 1981), citing *Young v. American Mini-Theatres*, 427 U.S. 50, 62-63. *Cf. City of Boston v. Back Bay Cultural Association*, 418 Mass. 175, 183-84 (1994), cited by Petitioner at 17, where the regulation, unlike the By-Law here, extended to non-commercial speech as well as commercial speech.

leading to its belated allegation that racial animus motivated the Town in adopting the By-Law. App., *infra,* 43a (R. A57, ¶¶ 62-64), (A70-79, 126-52). Both the district and appeals court rejected that claim, however, because the record is devoid of evidence that a racially discriminatory purpose motivated enactment of the By-Law. Petitioner's App. 23a and 51a. *Washington v. Davis,* 426 U.S. 229, 240 (1976) ("the invidious quality of a law claimed to be racially discriminatory must be traced to a racially discriminatory purpose.") (R. A57-63, ¶¶ 62-96).

National has the burden of proving the existence of purposeful discrimination. *McCleskey v. Kemp,* 481 U.S. 279, 292 (1987) and cases cited. Moreover, "[d]iscriminatory purpose . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Massachusetts v. Feeney,* 442 U.S. 256, 279 (1979) (citation omitted); *Church of Lukumi Babalu Ave. Inc. v. City of Hialeah,* __ U.S. __, 113 S. Ct. 2217, 2231 (1993).

Thus, National has the burden of establishing that the By-Law was adopted in this case "*because of* an anticipated racially discriminatory effect." *McCleskey v. Kemp, supra,* 481 U.S. at 298 (emphasis in original). This National is unable to do, for the voluminous testimonial evidence establishes the notable lack of a racial motive, or even an *awareness* of the racial composition of the late movie audience, on the part of the 270 member Town Meeting, which voted to adopt the By-Law, or any of the members of the Board of Selectmen who sponsored the By-Law and supported the By-Law at Town Meeting. (A57-63, ¶ 62-96). *See* discussion, *supra* at 5-8.

As the transcripts of Town Meeting debate indicate, even National, when provided with ample opportunity on two occasions to address the Town Meeting at length, during the course of its debate of the By-Law and prior to votes taken thereon, neglected to raise or even allude in any fashion to a racial or otherwise improper motive, the racial mix of its late show patrons, or the anticipated impact on those patrons of the By-Law under discussion, although he was quite willing to threaten the Town Meeting with costly litigation and to allude to "the intention of our company to go to war, so to speak, with the Town of Dedham" over the "economic impact on our business." App., *infra,* 17a-22a, 35a-39a. (R. A462-69, A492-93).

Although the district court, indulging every inference favorable to National as the non-moving party, accepted National's "secret and invidious survey" of patrons by race, Petitioner's App. 45a n. 3, arguendo for summary judgment purposes as probative of "the racial mix of Showcase audiences," *Id.* 51a, it noted, at Petitioner's App. 54a-55a, that, in addition to lacking any nexus to Town Meeting knowledge and motivation, "the entire claim of 'disparate impact' rests on a logical fallacy" since the written survey of reasons for late night attendance did not identify patrons by race. "For all that appears, the effect of closing down the late shows is identical for each patron and his or her alternative entertainment options are identical regardless of race. There simply is no disparate effect along racial lines . . ." *Id.* at 54a-55a.[10]

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10. Even assuming *arguendo,* the relevance of statistics allegedly reflecting the racial composition of late movie patrons *after* adoption of the By-Law, a "naked statistical argument" will not suffice to invoke strict judicial scrutiny; otherwise, "each difference in treatment . . . [would be rendered suspect], however lacking in racial motivation and however . . . rational the treatment might be." *Jefferson v. Hackney,* 406 U.S. 535, 548 (1972) (holding that a statistical deviation alone will not suffice to invite close judicial

(Cont'd)

Although the record "does not contain the slightest indication that the race of theatregoers was an issue" and "all the evidence supports Dedham's assertion that Article 4 was aimed principally at curbing late night disruptions," Petitioner's App. 24a, National, at 18, demands a trial on the basis of an alleged factual dispute arising out of the use of the so-called "code words" which National now labels "racial slurs." National proposes to supplement the legislative history consisting of verbatim transcripts of Town Meeting, App., *infra,* 1a-42a (R. A439-97), through expert testimony that Town Meeting members and other participants in the debate said something other than what they actually said and, in the inner recesses of their subconscious, meant something different and more sinister than what they actually voiced. From that, National hopes to persuade a fact-finder to infer that the 270 member Town Meeting, after hearing full debate in favor and against the By-Law, acted with a collective sinister and impermissible racial motive which at no time was ever voiced.

The proffered theory fails to meet even the most basic criteria of Fed. R. Evid. 104(a), Petitioner's App. 55a, and fails to present a trialworthy issue. *Celetex Corp. v. Catrett,* 477 U.S. 317, 324 (1986); *Turner Broadcasting System. Inc. v. FCC,* __ U.S. __, 114 S. Ct. 2445, 2464 (1994) (" '[i]t is a familiar principal of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive' ").

(Cont'd)
scrutiny). *See also, Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252, 267 (1977) (noting that "the historical background of the [governmental] decision is one evidentiary source" for determining the presence of a discriminatory motive; however, although the impact of the Village's refusal to change zoning to allow for construction of integrated low-and moderate-income housing "[did] arguably bear more heavily on racial minorities, . . . there was little about the sequence of events leading up to the decision that would spark suspicion"). *Id.* at 269.

National's cry of "sham" is baseless. The By-Law, on the undisputed record, is a content-neutral, limited time regulation, designed to serve a substantial governmental interest, narrowly tailored in the service of that interest, and leaving open ample avenues of communication. Therefore, the Court of Appeals correctly sustained the district court's grant of summary judgment.

II.

THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND THE DECISIONS OF THIS COURT, THE NINTH OR THE ELEVENTH CIRCUITS.

Neither *Turner Broadcasting Systems Inc. v. Federal Communications Commission*, __U.S.__, 114 S. Ct. 2445 (1994) nor *Edenfield v. Fane*, __U.S.__, 113 S. Ct. 1792 (1993), cited by the petitioner, conflict with the decision below. Both look for factual support as to governmental interest of an *abstract* nature. This Court, in *Turner*, while emphasizing, at 2471, that the legislature "is not obligated, when enacting its statutes, to make a record of the type that an administrative agency or court does to accommodate judicial review," was confronted with an abstract economic regulation, largely theoretical, and was, hence, unable to determine from the legislative record provided whether a concrete problem currently existed (in the form of a threat by cable TV to the health of local broadcasting) and whether the proposed remedy of protecting local broadcasting would, in the language of *Ward, supra*, at 799, "be achieved less effectively absent the regulation" imposing "must carry" provisions upon cable systems. *Turner* at 2469-2470. Similarly, in *Edenfield*, where the dangers of fraud, overreaching, or compromised independence of C.P.A.s, if allowed to solicit clients in person, were entirely theoretical, intermediate scrutiny could not be satisfied by a "record [that did] not disclose *any* anecdotal

evidence" derived from experience. *Edenfield* at 1800 (emphasis added).[11] To the extent the Court's search for something "substantial" in those records can be read to require a by-law of this nature to pass a "substantial evidence" test, the By-Law here, on the basis of the record below, does. *See Turner* at 2469, citing with approval *Ward v. Rock Against Racism, supra,* where resident complaints satisfied intermediate scrutiny.

National's frustration stems not from any lack of convincingly concrete experiences of secondary effects by the Town[12] but rather with the Court of Appeals' reiteration of the *Renton* standard in ruling that "a legislative body, acting in furtherance of the public interest, is entitled to rely on whatever evidence it 'reasonably believe[s] to be relevant to the problem' at hand." Petitioner's App. at 21a and n. 9, *citing Renton v.*

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11. It is interesting to note that petitioner relies primarily on cases based upon theoretical economic regulations which, of necessity, cannot be understood apart from some level of statistical analysis. *See Los Angeles v. Preferred Communications. Inc.,* 476 U.S. 488 (1986) and *Home Box Office v. FCC,* 567 F.2d 9, 36 (D.C. Cir.), *cert. denied,* 434 U.S. 829 (1977). Outside the realm of cable and broadcasting regulation, and contrary to petitioner's suggestion at 15, n. 21, studies have not been a required basis of legislative restrictions on speech. In *754 Orange Ave., Inc. v. City of West Haven,* 761 F.2d 105, 112, n. 6 (2nd Cir. 1985), cited by petitioner, the court focused upon *both* the absence of professional analysis of the impact of adult book stores on urban life *and* the absence of direct experience of an increase in such businesses in contrast to experiences of the City of Detroit relied upon in *Young v. American Mini Theatres,* 427 U.S. at 54-55 and n. 8. In *Avalon Cinema Corp. v. Thompson,* 667 F.2d 659, 661 (8th Cir. 1981), the record was deficient because it was not based on *either* "studies by social scientists, *or* on a demonstrated past history of 'adult' theatres' causing neighborhood deterioration." (emphasis added).

12. In fact, the Town Meeting did police itself through its legislative process of debate, where various speakers scrutinized the reasonableness of certain comments regarding broken windows at Papa Gino's referred to by National. App., *infra* 16a (R. A1888-89).

Playtime Theatres, Inc., 475 U.S. 41, 51-52 (1986) and *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989). Although National, at 14, bridles at the suggestion that it is asking the Court to require a legislature to "conduct ... an independent investigation and corroborate ... each incident" before acting in response to citizen complaints of secondary effects upon residential peace and tranquility, National's argument boils down to just that. *See* Petition at 14, 15, 20. The consequences of such requirement, however, would be the elimination of reasonable, content-neutral "time, place, or manner" methodology from the legislative process by requiring prior adjudication of the facts supporting each enactment, a requirement which *Turner*, at 2471, emphatically negated.

National, at 16, insists that regulatory action must be premised upon a direct correlation between documented incidents and the hours of the late shows, claiming that the First Circuit, in failing to insist upon such direct documentation, is "flatly in conflict with ... the Ninth and Eleventh Circuits." *Citing Acorn Investments, Inc. v. Seattle*, 887 F.2d 219, 224 (9th Cir. 1989) and *Krueger v. Pensacola*, 759 F.2d 851, 855 (11th Cir. 1985). In so arguing, National overlooks the guiding principal that the correlation must be reasonably related to the articulated governmental interest, *Edenfield v. Fane, supra*, 1798 ("unlike rational basis review, [intermediate scrutiny] does not permit us to supplant the precise interests put forward by the State with other suppositions."); *Clark v. Community for Creative Non-Violence, supra*, 297; *Acorn*, 224; *Krueger*, 854-55. That interest is not, in every instance, strictly the prevention of crime. Since crime in peep show booths and crime at topless dancing establishments were the exclusive governmental focus of the regulations in *Acorn* and *Krueger*, respectively, a direct correlation of criminal activity with those events was necessary to serve the articulated governmental interest in those cases and was not shown to exist. *Acorn*, at 224 (governmental interest advanced not supported by even city's own evidence); *Krueger*, at 855.

Here, where the governmental focus is on late night residential peace, National's emphasis on crime counting ignores the fact that not all "secondary" or detrimental effects upon the surrounding community (noise, litter, shining headlights in homes, and roaring cars) show up on crime logs. Many such incidents, particularly if recurring, may take the form of calls to selectmen, submittal of petitions or appearances at selectmen's meetings and Town meetings. (R. A42-43, R. A51-56, ¶¶ 4, 5, 8, 34-61).

Nor does National acknowledge that impacts from its late movies — some of which begin as early as 11:30 P.M. — may generate lines and other patron activities as early as an hour before, with peak traffic at midnight, and may span a broader period than the 1:00 A.M. to 6:00 A.M. period during which continued exhibition is prohibited. (R. A56, ¶ 61).

In short, National wishes to use the very self-restraint employed by the Town in fashioning its narrow remedy as a sword to attack that remedy by focusing only upon crime reports for the narrow period when exhibition is prohibited and ignoring the very secondary effects preceding and following such exhibition which the By-Law is designed to address.

Moreover, the record in *Krueger,* in marked contrast to the present record, "establish[ed] with unmistakable clarity the actual motives of the legislators" to be impermissibly content-based in light of "debate focused entirely on the morality of topless dancing and the propriety of having such activity going on next to a church." *Krueger* at 856.

The standards articulated in *Acorn* and *Krueger* are entirely consistent with those applied by the First Circuit to the record at hand.

CONCLUSION

The "fundamental questions" raised by petitioner, at 19 and 11, n. 16, as meriting review by this Court have been dispositively addressed in previous decisions of this Court and consistently applied throughout the circuits. A governmental interest warranting enactment of a content-neutral restriction upon the time, place, or manner of speech is manifested as more than theoretical when a problem is identified by wideranging reaction to and concern about direct experiences, brought to legislators' attention in the form of complaints, and disclosed by the record to be "reasonably believed to be relevant to the problem . . . address[ed]". *Renton v. Playtime Theatres, Inc., supra,* 51-52; *Ward v. Rock Against Racism, supra,* 800.

Neither "legislative hearings [nor] findings," Petitioner p. 19, are required. *Turner Broadcasting System, Inc. v. Federal Communications Commission, supra* 2471. Legislative debate provides the checks and balances as it did here. Far from a "political melee," as labeled, at 19, by petitioner, the Town Meeting here reopened debate to hear additional sides of the issue, App., *infra,* 12-15a and 35a (R. A1888-89) and a session of that Town Meeting, upon learning that National's representative had been unavailable to attend a previous Town Meeting session, voted 161 to 33 to reopen and reconsider the matter "so that we can hear the proponents and opponents of that bill tonight in its entirety and at least give a fair chance to the businessmen of the community to put their side of the story forward." App., *infra,* 13a (R. A455).

Since the record of Town Meeting debate manifests "overwhelming" support for Town Meeting's action on its stated concern, Petitioner's App. 22a n.10, — a stated concern in protecting residential peace and tranquillity long recognized to be an interest "of the highest order in a free and civilized society,"

Carey v. Brown, supra, 471, — and since petitioner's strategic interjection of an alleged illicit racial motive is revealed to be a phantom, maliciously conceived as a desperate gamut to keep the case alive, finding no substance in a record which "chronicles the lengthy series of events incident to the Town's consideration of [the By-Law] and does not contain the slightest indication that the race of the theatregoers was an issue," Petitioner's App. 24a, summary judgment upholding the By-Law was correctly sustained and National's petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX A — EXCERPT FROM THE RECORD: TOWN MEETINGS MINUTES, APRIL 10, APRIL 24, AND NOVEMBER 6, 1989

[stamped]
A TRUE COPY ATTEST:
s/ Margaret M. McGowan
Town Clerk

DEDHAM ANNUAL TOWN MEETING
MONDAY, APRIL 10, 1989

DEDHAM HIGH SCHOOL AUDITORIUM

H. HOLTON WOOD, MODERATOR

[Commencing at Page 90]

amendment?

(Seconded)

MR. MODERATOR: Now, we're chalker block full of amendments, and we can't go any further, so the vote would come first on the tabling motion that this Article be tabled until April 24, till the meeting on April 24. Is there a second to that, please?

(Seconded)

MR. MODERATOR: Will all those in favor please say aye.

(Aye)

MR. MODERATOR: Those opposed?

Appendix A

(No)

MR. MODERATOR: It is a vote; therefore, we will not act on that at the moment. Now we can move to Article 40, which you find on page thirty-one of your warrant. What is the recommendation on this?

MRS. KEHOE: There's a substitute.

MR. MODERATOR: Well, actually, it doesn't need to be a substitute motion, because there is no motion at this point. This is the motion by the Board of Selectmen and, Mr. Maggioni, it's not a substitute motion. It's the motion, isn't it, because it said a [91] recommendation would be made at the meeting, aren't I reading that correctly?

MR. MAGGIONI: The FinCom has made no motion on it so far, and I don't see anything in this booklet here about it.

MR. HORRIGAN: No, I haven't seen the substitute motion. We were prepared to indefinitely postpone it during our budget hearing, and we were asked by the Board of Selectmen to defer action on it. We have heard nothing since then.

MR. MODERATOR: The Finance Committee's motion was indefinite postponement, right; is that right? Is there a second to that?

(Seconded)

MR. MODERATOR: Then there is a motion, a substitute motion by the Board of Selectmen which I will read to you right now.

Appendix A

That Chapter 13 of the Town Bylaws be amended by adding the following new section: Section 42B, no holder of an entertainment license for theatrical exhibition, public show, public amusement, dance, except ballroom dancing by patrons and instructors, or exhibition pursuant to General Laws, Chapter 140, [92] Section 181, or 183a, shall conduct business between the hours of 12:30 a.m. and 6:00 a.m. This Bylaw shall not apply to the sale of food or alcoholic beverages to be consumed on the premises at which they are sold when such sale is by a licensed common victualler previously engaged in the sale of food to be consumed on the premises.

Is there a second to that motion, please?

(Seconded)

MR. MODERATOR: Mrs. Kehoe, please.

MRS. KEHOE: Thank you, Mr. Moderator. This is another article that the Board of Selectmen unanimously supports. And let me give you just a brief overview of why we have brought this before you this evening.

On the corner of Route 1 and Elm Street we have the Showcase Cinema, a multi theater development, and I will say that perhaps it brings a better approach to the town than something else that could have been constructed there, but it has brought with it a tremendous amount of traffic. The generation of that traffic has been immeasurable. Beyond traffic problems, we've had people problems. Let me be very [93] clear that the management of the cinema has employed private details from our Police Department, has their own security personnel there, and in spite of this positive action there is still need to call upon the

Police Department itself to remedy the people problems, and they are many, many, many.

In addition to those kinds of things, we've had an overall environmental adverse environmental impact on the neighborhood. These problems have been discussed before the Board of Selectmen, by the neighborhood, at great length and many, many times. The neighborhood has had a meeting recently, developed a petition signed by all the neighbors indicating that they are in agreement with the Board of Selectmen's proposal in the original proposal called for a midnight closing. In other words, the theatre complex would be emptied by midnight. We wouldn't have any more shows letting out at two and three o'clock in the morning, which is part of our problem. We want to control the environment.

In this particular neighborhood, a very small community has suffered terribly from this imposition. As recently as last Thursday evening the [94] representatives from National Amusement met with the neighbors and with the Board of Selectmen and the principals told us of the difficulties in exiting the theater all at once at midnight. So, as a concession, the neighborhood agreed to a twelve thirty closing so that the exiting could be staggered.

This is going to help, not only that immediate neighborhood, but the entire town. The exitus onto Route 1 is unbearable. The reverse of the traffic back on Elm Street, Rustcraft Road, and ultimately East Street, has caused a constant disturbance; one o'clock, two o'clock, three o'clock in the morning. It seems to me that healthy entertainment should be over by twelve or one o'clock. And I guess maybe I'm playing the roll of mother in wondering why these young kids, who don't even live in Dedham, should be attending the cinema and starting home at two

or three o'clock in the morning, and damaging property belonging to property owners in the area. It's become extremely serious.

We believe truly that if you people would support this amendment it will be most helpful. I don't know if anyone is here this evening from the [95] neighborhood. The petition is available and we would really ask your very sincere consideration in the acceptance or the support of this Article. Thank you very much.

MR. MODERATOR: Thank you Mrs. Kehoe. Mr. Reid.

MR. REID: I support this Article on behalf of the selectmen, but I think there are several problems with it. First of all, would this affect the Holiday Inn, would it affect J.C. Hillary's, would it affect any other establishment that has an entertainment license. It wouldn't prohibit them from serving food or alcohol, but you certainly wouldn't be able to go and listen to a band or to dance, or anything at one of those locations.

The other thing is, by virtue of being a bylaw, the fine is $50.00 for an offence. If you think a $50 offence per night by being a bylaw violation is going to stop National Amusements from running a show after midnight, I don't think so. The other problem is the time factor of what happens if it's eleven thirty, twelve o'clock, twelve thirty for a show? Movies today run various lengths, and I don't [96] know how they're going to fit them in. In order to do so, they probably have to start the shows earlier, which means that at rush we're going to have greater congestion.

I think that there are some problems with the Article, although I'm generally for it, but I don't want to have it put in

teeth, and that it does, in fact, affect some businesses in town that depend upon that for their livelihood, such as perhaps the Holiday Inn or J.C. Hillary's which do have live entertainment and operate under an entertainment license. Thank you.

MR. MODERATOR: Thank you. Yes?

MR. JOHNSON: My name's Frederick Johnson, I'm the Chairman of District 6, and this was the first thing I got involved in after I was elected Chairman. I attended several area meetings with the residents of the area; Robinwood Road, Elm Street, and quite frankly they've been working with the people from the cinema. Mr. Towey is to be commended. He's a very professional man, and they tried to work with the area residents.

[97] In return for letting the cinema stay open to just twelve thirty, and help them out, Mr. Towey is willing to look at perhaps doing some other things to help the people in the neighborhood. This is for the people in that little area of town that are stuck, they're stuck between the highways, the cinemas, they got N.D.A. coming. All they're asking for is a little break. Twelve thirty is a very reasonable time for the parking lots to be emptied out and the people to go home.

I mean, the residential people in this town deserve a break. I know one thing, I wouldn't want the cinema across the street from me. It's bad enough that the land values of these people's property is probably going to start to decrease in the future, but something like this is only going to be good for the neighborhood. It's going to get the trouble out of town earlier. Perhaps it's only a bylaw, as Mr. Reid says, but it's a start. It shows that the people at the cinema that they're going to have to work with the area residents, and that they're going to have to get along and be good neighbors.

They appear to be making those kinds of strides, and I think this Article is [98] excellent. I urge you to support it. Thank you.

MR. MODERATOR: Thank you. Mrs. Kehoe, please.

MRS. KEHOE: Just in response to Mr. Reid's question. I want to assure everyone that concerts are not included in this Article, nor is ballroom dancing. We're not interested in eliminating healthy entertainment that certainly ceases long before 3:00 a.m. So those are not a part of this Article.

No holder of an entertainment license for theatrical exhibition, public show, public amusement, dance, except ballroom dancing by patrons and instructors, or exhibition pursuant to the General Laws, Chapter 140, Sections 181 or 183a, shall conduct business between the hours of 12:30 a.m. and 6:00 a.m. This Bylaw shall not apply to the sale of food or alcoholic beverages to be consumed on the premises at which they are sold when such sale is by a licensed common victualler previously engaged in the sale of food to be consumed on the premises.

MR. MODERATOR: Yes, there's a gentleman here, please.

MR. SULLIVAN: Thank you again [99] Mr. Moderator. John Sullivan, District 8. For your information, to reinforce Mrs. Kehoe's statement, that parking lot holds almost two thousand cars. One thousand nine hundred and sixty-two cars. The only lot larger than it in the entire Town of Dedham is the Dedham Mall, which holds two thousand eight hundred cars.

So, if you can imagine two thousand cars in your own neighborhood coming out of the theater burning rubber, screaming down the highway and raising general hell, if you live

near that theater, I ask you, as Ed McGonagle asked you earlier in the evening; please, everybody think as one town. Think of all the people that live in that area and have compassion for them, consideration for what they have to go through every damn night in the week. Three hundred and sixty-five days a year they're enduring this, and I think they're tremendous to have endured it so long.

This past week sixteen windows were smashed in Papa Gino's Plaza. Were you people aware of that; sixteen windows. Can you imagine the value of those windows in Papa Gino's Plaza? I think it's outrageous. This happened at 3:15 in the [100] morning; so those were the characters that came out of the theater. This is what they do, they go around stealing cars, smashing windshields in, and smashing other people's property up. I ask you, please, support this motion. Thank you.

MR. MODERATOR: Thank you. Yes, this lady here, please.

MS. DE AVILA: Gayle DeAvila, District 3. You know, there seems to be a problem here with this twelve thirty. It seems that we're giving in again to a development that started out with just a few theaters, and now is up to number ten theaters. I don't know how many more times they can dissect that building to get more theaters. I just feel that they're being a glutton over this whole thing, and why do we have to go to twelve thirty? Why can't they stop their movies in such a way that they get out at eleven thirty, so by twelve o'clock it's all over with.

MR. MODERATOR: Yes, thank you.

MR. JOHNSON: Ladies and gentlemen, Frederick Johnson, District 6. While I am an area resident, I also understand that we have to be responsible in dealing with businesses.

National [101] Amusements have been very good neighbors to the people as best they can up there, but they're there to make money and to run a business. Trying to close them down at eleven thirty is just going to make things worse. As the profits go down, they're not going to make the improvements they promised to those area residents, okay.

You live in District 3, Ma'am, I can understand that, but these people live right up next to that theater, and they've gone through some long negotiating periods with the people from National Amusements; they've worked very hard to come to a mutual understanding agreement everyone can live by. I was at the meeting held at the Board of Selectmen's office last Thursday afternoon. Mr. Towey met with the neighbors, they came to a mutual understanding that they could both live with, and I think it's only fair that Town Meeting support the agreement these people made. If we try to push it back it's unfair to National Amusements, and it's going to turn out to be unfair to the residents of Robinwood Road and Elm Street, because they're going to be the ones that take the brunt of any action that National Amusements would [102] take if we hurt their business that badly. Thank you.

MR. MODERATOR: Thank you. I think we've had pretty good discussion on this item. There's a gentleman here who does want to speak. I guess we'll give him the right, and then we'll move to the vote.

MR. PUNGITORE: Hi, my name's Tony Pungitore. I'm from National Amusements.

MRS. KEHOE: He didn't ask permission to speak, Mr. Moderator.

MR. MODERATOR: What's that?

MRS. KEHOE: He didn't ask permission to speak, Mr. Moderator, did he?

MR. MODERATOR: Are you a resident of the town?

MR. PUNGITORE: No, I'm not a resident of the town.

MR. MODERATOR: No.

MR. BROWN: I'd like to hear what the man has to say. I am a Town Meeting Member, and I'd like to hear what he has to say.

MR. MODERATOR: Thank you Mr. Brown. Go ahead.

MR. PUNGITORE: Well, I just wanted to [103] mention that National Amusements does want to address this issue, but we didn't expect the Article to be discussed tonight. If it could be postponed we would —

(No)

MR. PUNCIGORE: — love to have someone return. Would that be possible?

(No)

MR. MODERATOR: It depends on the vote. I guess you've got to put it to the vote. Now we come to the vote on the substitute motion, which I would be pleased to read if you would like it again. I think perhaps everybody has the gist of it, so we can go ahead and vote it. It requires a simple majority vote.

Will all those in favor of the substitute motion kindly say aye.

(Aye)

MR. MODERATOR: Those opposed? It is a vote. Thank you. Now we move to Article 41, and is there a motion on that? If there is no discussion on Article 41, the motion is that it be so voted. Will all those in favor please say aye.

Appendix A

A TRUE COPY ATTEST
s/ Margaret M. McGowan
MARGARET M. McGOWAN
TOWN CLERK

DEDHAM ANNUAL TOWN MEETING

MONDAY, APRIL 24, 1989

8:00 P.M.

DEDHAM HIGH SCHOOL AUDITORIUM

H. HOLTON WOOD, MODERATOR

* * *

[Commencing at Page 41] which have not been passed, are now voted. Will all those in favor say aye.

BODY: Aye.

MODERATOR: Contra minded? It is a vote, thank you. Now, we can — Yes?

MR. ERNEST REID: Ladies and gentlemen of the Town Meeting, my name is Ernest Reid, I'm with District 4.

Last week in the confusion of Town Meeting we voted on a warrant article. That warrant article which came before us last week was, I think, untimely to the extent that the proponents of the article were not notified to be here due to the fact that it was expected that we would be discussing the financial aspects of the article last week and continue on this week. Even in some of my

aberrant requests before this body I have always found an inherent sense of fair play. To that end I would like to request that reconsideration be made to reopen article number 40, so that we can hear the proponents and opponents of that bill tonight in its entirety and at least give a fair chance to the businessmen of the community to put their side of the story forward.

[42] I just don't think they had the opportunity. They showed up last week and it was late and I just think in fair play we should do that. I would like to request this town body's assistance.

MODERATOR: Is there a second to reconsideration? (Seconded)

More than one hour has expired since the vote was taken on article 40. Hence, to reconsider requires a 2/3's vote. Reconsideration also — I think I'm correct, Mr. Maggioni, does not permit debate, does it?

MR. MAGGIONI: No. — Yes, there can be debate on reconsideration —

MODERATOR: I guess there can be debate on reconsideration but you've go to — the only thing you can do on reconsideration is state the reasons for reconsideration and not get into the meat of the article itself.

MR. MAGGIONI: Exactly.

MODERATOR: Since — Yes?

MR. CHAFFEE: I'd like to speak to reconsideration.

MODERATOR: Would you come forward, please, Mr. Chaffee, so that everybody can hear you.

[43] MR. CHAFFEE: Speaking to reconsideration only, I happen to agree with Mr. Reid that having brought these people before the Board of Selectmen some three of four times last year, they did everything that we asked them to do. Many of the things we asked them to do they did not have to do, and I think it only fair that we at least hear their side of the story.

I am not speaking to the article, pro or con, but I think we — in the sense of fairness, we should listen to what they have to say, as they were not allowed to speak at the last hearing of this meeting.

MODERATOR: Thank you, Mr. Chaffee. Now —

MR. FREDERICK JOHNSON: I'd like to speak to reconsideration, or against it.

MODERATOR: Go ahead.

MR. FREDERICK JOHNSON: Frederick Johnson, District 6 Chairman. As far as reconsideration goes this article was discussed at length last week. The various sides were brought forth and apparently we — whoa, whoa, whoa, wait a minute. The amusement people were not allowed to speak, but at the same token, they were allowed to be here, they were in here. The issue was discussed and that should be it. Thank you.

[44] MODERATOR: Now, the question before the house is for reconsideration, which requires a 2/3's vote. Hence, we'll have to ask for a standing vote on article 40.

Appendix A

Will all those who favor reconsideration of article 40 kindly stand and remain standing until you're counted. Please make sure you are counted. Thank you.

(Tellers take count)

MODERATOR: Will those District Representatives who are opposed to reconsideration kindly stand and remain standing until you've been counted. Thank you.

(Tellers take count)

MODERATOR: Ladies and gentlemen of the Town Meeting before I give you the vote let me tell you that there is a grey sedan outside, which is either a Ford or a Cougar, license number 317 FKM. 317 FKM. The lights are on in that vehicle, so it might be well for the individual to go out and turn them off. Thank you.

Now, 194 Town Meeting members, or District Representatives voted on reconsideration, 161 having voted in the affirmative and only 33 in the negative. [45] It is a vote, so we move now to reconsideration of article 40. Yes, Mr. Reid, please.

MR. ERNEST REID: Let me thank you for your sense of fair play here tonight. The article in question, article 40, did a couple of things for me that I felt were out of context. And then the day after Town Meeting, or a day or so thereafter I received a letter from a gentlemen, the Executive Vice-President of National Amusements.

First of all, I was concerned with the fact that there should be no dancing other than ballroom dancing. I don't know, somebody

here might like to boogaloo, or do a foxtrot, but we're not allowed to do that after midnight. That could seriously effect our high school graduating seniors, if they wanted to do something in the Town of Dedham after that.

The statement was made last Town Meeting that all the windows that Papa Gino's plaza were broken by patrons of the cinema. I don't think there's been any evidence, either by the police department, or any other individual that those windows were broken by people from the cinema. As a matter of fact, I think anybody getting out of the cinema at 12:30 or one o'clock would [46] be crazy to drive to Papa Gino's plaza, which is closed, get out of their car, throw rocks at windows, get back in their cars and take off. I just don't think it happened that way.

Now, when I received the letter from — I hope I'm saying his name right, Mr. Towle — I called him and I said — right off the top of my head I said, "Can you tell me what you've done for the Town of Dedham?" I believe — I would like to recognize him to speak in a moment, but before I do I would like to go in to several things.

National Amusements have contributed to the Town of Dedham in the following way: They have purchased a van for police used to patrol the neighborhood and the parking lot of the cinema at their expense; marked with blue lights, manned by police officers who they pay on detail. They got approval from the state Department of Public Works to put a police officer on the lights of Route One at Elm Street to control the traffic, at their expense. They pay private security, at their expense. They pay a clean-up detail to go through the neighborhood, at their expense.

[47] What do they donate to the community? The Drug and

Alcohol Advisory Council get the use of their cinemas for free. The Dedham Cleanup Day got the use of their cinema and some other assets of the cinema. They contributed to the Dedham High School yearbook, the Dedham High School sports calendar, the Dedham High School band uniforms. They contribute to the Dana Farber Jimmy Fund, the Will Rogers Fund, the Neurofibromytosis Foundation, Saint Katherine's and Saint Mary's Schools, Sacred Heart School, Westwood High School, Horizon House, McLean Hospital, Jewish Rehabilitation Center for the Aged. And the list goes on and on and on here. These are donations made by these people to be a good neighbor.

The question is, are we being fair when we don't allow them to speak, number one, and number two, by curtailing their business? I'm also concerned with the fact that if we come in after the fact and say to a man, "You're not entitled to use your property to full benefit", I believe he's entitled to an abatement, because his property is no longer worth what it was prior to us passing this article.

But the decision is yours, ladies and [48] gentlemen, and I believe Mr. William Towle is here, and I would like to recognize him, with the consent of this body, and have him speak on the article if I may.

MODERATOR: The motion is before the house that this gentleman be allowed to speak. Will all those — is there a second to that, please?

BODY: Second.

MODERATOR: Will all those in favor please say aye?

BODY: Aye.

MODERATOR: Contra minded? It is a vote. Thank you. Would he come forward please. Please identify yourself by name so that the reporter will have your name. Thank you.

MR. BILL TOWLE: Thank you, Mr. Moderator. Mr. Reid, ladies and gentlemen of the Town Meeting, thank you very much for the opportunity. My name is Bill Towle, I'm senior Vice-President of National Amusements, owners and operators of the Showcase Cinema at the intersection of Route One and Elm Street.

I'm most pleased to certainly hear, what I feel to be, a very sincere sense of fair play toward your business neighbor. It's most appreciated and most [49] welcome. I think what I would really like to speak to you about is an amplification of that fair play issue. So, if I may, just to give you a brief history and I'll try not to take a lot of your time. As again, I do appreciate just the opportunity of being able to address you.

On January 23rd we received a letter from the Board of Selectmen asking us to appear before them at a meeting on February 2nd to address issues of alleged problems with the late shows and security and so forth on the parking lot of the cinema following the late shows, which we hold on Friday and Saturday evenings. We've held the late shows at the cinema for fifteen years. This was the first time in the history of the operation of our cinema that we have been asked, either by the Selectmen, by any neighbors, or by the police department to ever come before them. We've never been approached or asked any consideration, any thoughts in mind of any problems with our late show operation. So, this was the first time.

Appendix A

On the morning of February 1st, just to kind of give a chronological perspective here, we read in the Dedham transcript that this article had been [50] proposed on the — I believe it was the 16th of January. Article 40 had been proposed to be placed on the town warrant by the Selectmen and, again, we received our notification of request to discuss the various problems that were alleged to have occurred at our cinema on January 23rd, fully a week later.

So, we did meet with the Selectmen, subsequently we met with the police chief and neighborhood representative, Robert Cedrone that meeting took place approximately one week after the meeting with the Selectmen.

We listened to the problems and we worked out some solutions with the chief of police and also with the neighbors. Those solutions were to change some of the police schedules that we currently were running at the cinema. We introduced, as Mr. Reid said, a police van at our expense, driven by a Dedham police officer to patrol the parking lot of the cinema as well as to patrol the residential areas, which would be Robin Wood Road, Elm Street, and also up as far as Washington Street, Route 1A where the bus stops for the M.B.T.A. as they felt that there was some problems with the young children waiting for the bus up on Washington [51] Street. So, we agreed to patrol, also, that area. That patrol is on duty on the weekends from, approximately, seven o'clock in the evening until the theatre is closed and the parking lot is completely emptied. In addition to that, we have police patrols on our parking lot as well as, Mr. Reid mentioned, we manually control the traffic signal at Route 1 and Elm Street on the weekends to allow the cinema patrons to exit the theatre faster and eliminate traffic problems on Elm Street.

In addition to that, we have a police officer posted at the corner by the Holiday Inn, which is entirely off of our property, but yet we place the police officer there to stop people from parking across Route 1 and then trying to come across the heavy traffic on Route 1 to the cinema. So, that policeman as well as patrolling our customers and making sure they don't park there, also watches over the patrons for other businesses such as Hillary's the Holiday Inn and watches over, also, the cars that are parked in the Dedham Nissan parking lot. We do this, again, at our expense, our sole expense.

In addition to that we have a police officer [52] posted every weekend on the General Motors parking lot across the street on Elm Street. Again, this was done at the request of neighbors who felt teenagers were hanging out in that lot during the late hours. So, we put a police officer there who blocks off the parking lot in the evenings and on the weekends to assure that no cinema patrons are parking in that lot.

In addition to that we have been working, at the request of the Selectmen, during that meeting on February 2nd, with the M.B.T.A. to attempt to get a bus stop changed, so that the cinema would become part of the bus stop routing for the bus running between Forest Hills station and Walpole center. We've had several meetings with the M.B.T.A. and we feel we're coming close to working that out. The bus stop area would be dedicated to the M.B.T.A. for their use by the cinema and we would be making any of the necessary changes and so forth to allow that stop to be used. This would not only be beneficial to the people trying to use the buses to go to the cinema, it would also be very beneficial to the people working on Elm Street where all of the new office buildings and so forth have been built down past the cinema, and also past where our [53] office building is.

So, we have effectively, I believe, from that respect, tried to address, sincerely address, at great expense, a lot of the problems that were presented to us by the Selectmen. In addition to that we have meeting with the neighborhood representatives. We've had five meeting with them. They have asked us to address problems, some of which have no bearing on the late show, but nonetheless we have tried to address those problems, work with our neighbors to solve general neighborhood problems. It's been mentioned, for example, that we have our people pick up litter on the front yards, along the curbing of Elm Street. Our police patrol vehicle that goes up Robin Wood Lane and Elm Street and on up to Washington. They have asked us to do something with the rear gate, which is used for an express exitway out to Route 1; to close that gate up over night and we have certainly consented to do that with permission of the town officials, since we have been requested a few years ago to keep that open over night. But we're certainly willing to close that.

We have addressed many other issues on our parking lot as well as the entrance to the cinema. [54] It's been requested that we try to move the entrance to the cinema further to the north to get it away from Robin Wood and up adjacent to the General Motors area. We have been working on plans to do that and we are in the process of proposing and getting plans and trying to get approvals from the town to make that move.

All in all, through all of the proposals that we have made to our neighbors, the requests that our neighbors have made of us, the requests that the Selectmen have made of us, we anticipate and have proposals to the effect of spending about $284,000.00 to help improve the traffic situation on Elm Street, to help improve the traffic flows into our cinema and out of our cinema. In addition to that we spend, approximately, $184,000.00

annually on police and private security details to address the various problems that the neighbors feel that they have and to address the problems the Selectmen have presented to us as well as to present security for our own patrons and for our own cinema operation.

We would like to ask that in deference to the fact that we have proposed and agreed with our neighbors to proceed to spend that kind of money to [55] help resolve the problems that we not now be hurt, both economically and competitively in our business by closing us down. We would like to ask that you consider postponing the implementation of Article 40. Give us a year, let us work with our neighbors, let us work with the town officials, let us work with the Dedham Police Department. If after a year we haven't done our job and you feel that we are not a good neighbor, that we aren't a good corporate citizen, reenact the Article. But at least give us an opportunity to show that we can work with you and we can live in peace and harmony and do our job and be a good citizen. Thank you.

MODERATOR: Thank you very much. Now, Mr. Reid.

MR. REID: I'll need your assistance, Mr. Moderator. I'm not sure what the exact format of this is to reopen this for consideration and vote. But I would like to somehow project that this Article be re-voted and indefinitely postponed. If in fact, national Amusements does not deliver, then next year we can reintroduce the motion. How would I go about —

MODERATOR: Mr. Maggioni, the appropriate [56] vote would be for indefinite postponement, would it not?

MR. MAGGIONI: I think other people want to speak on this.

MODERATOR: Yes, but we haven't go a motion before the house, so we really ought to put the motion, right?

MR. REID: In deference to fairness I'll set the motion —

MODERATOR: Just a moment.

MR. MAGGIONI: The original motion is before the house on reconsideration. Now, if he wants to offer a motion for indefinite postponement, that's his prerogative.

MR. REID: Which I do, but I would like to offer that and then have discussion by other members here who would like to speak.

MODERATOR: Mr. Reid has proposed indefinite postponement, is there a second to that?

BODY: Seconded.

MODERATOR: Thank you. Now, are there people that want to speak on the Article? This gentleman here, please.

[57] MR. CEDRONE: Thank you Mr. Moderator. My name is Bob Cedrone and I'm District Representative of District 6. I'm also the Chairman of the Poor Farm Committee. I don't think many people here remember the Poor Farm. To those who do and some that don't it used to be up where G.M. is. The farmhouse itself used to be where Allied Fabric is. That's right across the street from the cinema. Now, right behind G.M. is a neighborhood. It's Robin Wood Road and Elm Street. There's twenty-six houses in that neighborhood. The houses consist mainly of six middle aged adults, my age, and 80% of them are elderly.

Appendix A

We set up our committee on the request from the Selectmen to get together with the theater and try to come to terms with what was going on in the parking lot at night about security. We met down Chief Teeling's office and we got together on extra police details. We asked them to supply a van and they did and they cooperated with us on that. There are a few other items that we wanted to take care of and we went into meetings for about six to eight weeks and nothing was — just a lot of lip service.

In the old days before the cinema was there [58] and before G.M. was there that neighborhood had neighbors that were people, not businesses. People had the say on who was walking the streets in their neighborhood, not businesses. Now it's getting to the point where every time that neighborhood turns around there's more people coming out of the late show cutting through the neighborhood, cutting through the back yards. The elderly people still can't get used to that, even with the extra police protection. The van helps them out a lot. They've talked to me, they like to see the police presence and the extra police on duty are appreciated greatly.

But in that area of Dedham the businesses start about nine o'clock, so from nine o'clock in the morning until about ten, ten-thirty you can't pass on Elm Street. Then when they close up at three o'clock, from about three to six you can't get by on Elm Street. That happens all week long. Then you figure on the weekend when businesses are normally closed, the theater is open. So, during the day you don't have to worry about your kid running out on Elm Street on Saturday because the theater is not doing much business during the day. But then at night when it's dark it's [59] not your kid your worrying about anymore. At twelve o'clock they're showing movies, you're in bed. When most of you people are in bed, sleeping, you've got that serenity,

you can go to bed, you can sleep, there's no problem. The people in this neighborhood got to go to sleep. If they hear a noise outside, they're awake. They're sleeping on eggs out there.

There's been many phone calls many times in the past for the younger people in the neighborhood to go out and investigate things and we've done it. Because they're elderly, some of — they're all over sixty. Some of them are in their eighties.

Just recently National Amusement hired more detailed officers, supplied them with the van for the patrolling the neighborhood. This was greatly appreciated. The back gate was asked to be closed during the day and in the morning and to be opened at night when they were doing business, because the problem we have there is people coming out of the — from behind their parking lot using Elm Street, adding more traffic. Then they took us to — the police chief it started with. Then it went to the fire chief and now it's somewhere else in town government, I don't [60] know where it ended up, but the gate still isn't closed and you still have traffic coming through.

I think where we already voted on this article that we should keep it installed. Send a message back to Robin Wood Road, Elm Street that this town is going to start uniting against these businesses and let the town run their own streets again. Not the businesses. I think that would be a great message to bring back to Robin Wood Road. Thank you.

MODERATOR: Mr. Hoyle, please. You're not a Selectmen and you won't be a Representative of this town if you don't keep quiet (indicating to floor).

MR. HOYLE: Despite Mr. Reid's eloquence, he certainly

doesn't live in the neighborhood. He has not come out of that theater, started up his vehicle and found all four wheels drop off the car. He's not had a fifteen or sixteen year old youngster up in that particular area on an extremely cold night, two of them, stripped of their jackets. Fortunately, our police department found these nice little out-of-towners down at the Lechmere lot and these individuals were apprehended. There are numerous instances of acts that can only be attributed to an undesirable element [61] that's attracted by General Cinema activity. We've had several meetings on this particular issue with the proprietors of that entity. One of the compromises that I offered as a member of the Board of Selectmen was that they would abstain from going forward with their intention of adding two more theaters. They've got ten up there now. They want to add another two, making it twelve. To see whether or not the measures that they proposed implementing really bring on a desirable result for the neighbors, they did not buy the compromise, yet they want you to abstain from action on this particular matter deferred for another year. The Board of Selectmen have heard neighbors on many, many, occasions speak of what they have to confront with. I think that if Mr. Reid was up in that particular area he'd be singing another tune.

MODERATOR: Mr. Brown. Mr. Brown wants to speak.

MR. JAMES BROWN: My name is James Brown, 418 Whiting Avenue, Dedham, I'm a Town Representative. I also worked for Norwood Security who does the security work for the cinema. I was there for two years and I was stationed outside. There was not as many problems [62] as there is now. I don't know who's up there on security, but they took me out of there and I would not go back there if they begged me. So, let them live with the problem they have. If they can't afford to hire security

and put them where they should be, then they shouldn't be there. Thank you.

MODERATOR: Mr. Johnson, please.

MR. FREDERICK JOHNSON: Frederick Johnson, District Six. What we have here is a very touchy situation, ladies and gentlemen. I'm of the firm belief we should let the people of the theater, Mr. Towle and those people — and let me emphasize, they are professional people up there. They have made a decent effort. They are not out to just make a buck. They are in business to make a profit, but I mean they are concerned about the neighbors. But I think this is something the neighborhood and Mr. Towle and the theater and — have to work out themselves.

The neighborhood people voted in the Selectmen's chambers two weeks ago, or whatever, to implement this article. There's nothing that says that if Mr. Towle and the people from National Amusements make an agreement with the neighbors that satisfies [63] them they can't tell us to rescind this vote next year. I think it's a matter of business in this town against the residents. That's what it boils down to. Twenty-six tax paying dwellings against one business tax paying dwelling. Believe me, National Amusement pays their taxes. We're not out to — to say that they don't. They've done some good improvements up there, but I think this is the chance to give the neighbors the ace.

We implement this article and then we let Mr. Towle and National Amusements negotiate with the neighborhood this year. If they can make satisfactory repairs, or however you want to word it, to make everyone mutually happy, the neighborhood committee can let the Selectmen know next year they they want this rescinded. That they've come to an agreement, that they're

willing to let these people stay open. That they're willing to let them conduct their business, but they're going to be guaranteed what they want.

We have to back up the residents of this town before we back up the businesses. I mean, every time we come up to a commercial development article we're against business. I'm not totally against business in [64] this town. They pay their taxes, but I think we've got to give the neighborhood the edge. That's the way to vote on this article.

As far as closing them at twelve-thirty, one o'clock, two o'clock, maybe if they're willing to do some other things the neighborhood might come back and say, let's close them at two. These people are stuck up there. These are the people that are stuck between the highway, the theater, and pretty soon N.D.A. Nobody wants to say it, but that's the bottom line. A little peace and quiet between twelve-thirty and six in the morning isn't too much to ask. If they're willing to perhaps settle for some other improvements in the area and let the theater stay open, let them negotiate. But let's let them negotiate from a position of strength. I ask you to hold this motion the way it's passed. Let a year go by. I know it's going to hurt the business of the theater, but it's going to give the neighborhood a little bit of an edge to get what they need up there. This is my district. These people, they're going to be hurting up there. Let's give them a break. Thank you.

MODERATOR: Mr. Chaffee, please.

[65] MR. CHAFFEE: Thank you, Mr. Moderator. Not my intention to keep the discussion going, but in answer to Mr. Brown's question, the security guards were removed by request of the Board of Selectmen and regular Dedham Police details were hired by National Amusement.

The second statement I'd like to make, you can sit in any one of a number of places in town of Dedham and drink to your heart's content until 1:00 a.m., but you can't watch a movie after midnight.

MODERATOR: Thank you, Mr. Chaffee. Mrs. Kehoe, please.

MRS. KEHOE: Thank you, Mr. Moderator. I hope that indefinite postponement does not prevail. I think when we look at this particular article, we're looking at the health of the town, the welfare of the residents of the town. In recent years and in recent weeks, as a matter of fact just two weeks ago this evening, this Town Meeting body saw fit to hang tough on certain re-zoning. Why did you do it? You did it to protect the town.

This is a similar issue. We have had a number of problems up there which have called for [66] special assistance from our police department. Let there be no misunderstanding — and I'm pulling from my memory, because I don't have the statistics with me this evening, but I think there was some forty-four odd calls to the department in a matter of, approximately, six weeks. Mr. Hoyle named a few of the incidents.

In addition, because of the attraction at that corner, we have had fences that have been put up by residents destroyed, graffiti written all over them, rocks thrown through windows of residents in the area. Very, very serious, very threatening offenses.

We feel that fair play is in order. If we want to talk about fair play I think we should consider the residents. I have with me a petition signed by the residents of Robin Wood Road and Elm

Street, seeking consideration. Not allowing National Amusements to conduct their business after 12:00 a.m.. The greatest problem that has faced us are the late shows on the weekends when the theater exits at two and three o'clock in the morning. I think that this has become more than the neighborhood can handle. We really have felt that we had to halt the practice. Probably a month ago we met with the residents and the vice [67] president was there. The vice president told us of all the things that had been done to satisfy the neighborhood and the town and all the things that they would try to do in the future. I'm sure that they will make every effort to keep their word. However, I would suggest to you, as Fred Johnson suggested, let's go ahead and keep what we voted in place. Keep what we voted two weeks ago in place and if National Amusements satisfies the needs of the residents in the town then next year I will come back here and I will ask that we rescind the action that we took two weeks ago.

You know, I remember standing before this body some six, seven, eight years ago and we talked about precinct lines and the need for precinct lines. Yet when it comes to an issue such as this, which may effect a neighborhood in particular, but a town in general, I think it's important that we forget those precinct lines and whether a person lives in one or nine or six or four, we've all got to stand together and support the neighborhood that is crying out for our help. Believe me when I tell you that this neighborhood is crying out for our help. If they weren't the Board of Selectmen would not be here this [68] evening united in their stand. So, we ask you, please, do not vote to indefinitely postpone this article. It's essential that we keep our original vote of two weeks ago in place. Put yourself — place yourself in a home on Robin Wood Road or Elm Street. Can you imagine what you would be putting up with? Don't you believe that truly you would have put your name on this petition? Don't you believe that

you would have come before the Board of Selectmen imploring help? Those people did and I think it's up to this Town Meeting body to understand the position that those residents find themselves in and to vote not to indefinitely postpone this article.

If National Amusements goes through and satisfies the residents the Board of Selectmen will be back next year and relieve National Amusements of the twelve-thirty closing. Thank you very much.

MODERATOR: Mr. Civatarese.

MR. CIVATARESE: Nick Civatarese. We do have a district three, and that's where I'm from. Mrs. Kehoe forgot to mention it, we'd like to stand behind these people, too. She says, "Please forgive me". I do.

[69] I was at the Selectmen's meeting when that young fellow came in and he threw his pitch. I've got nothing against him, I've got nothing against the show. He's got an awful lot of shows there. He gave his reasons. At first they wanted to close at twelve o'clock. He said twelve o'clock is too early. They said why? I don't know this much about it, but I'm going to give you an idea of what he said. Some of their films go until five past, ten past, quarter past twelve. He said if you deprive me of this, he said, what time do you want me to start the shows, I'll have to start a little too early.

The neighbors were there and they said, well, that's sounds fair. How about if we suggest twelve thirty. He said twelve thirty sounds pretty good. He says, that gives me a chance to finish all my films, and he says, today with the competition the way it is we have to get so many films a week, if we don't we don't get the

choice films. So the neighbors said, okay, let's buy the twelve-thirty.

Now as far as I'm concerned, there's nobody here killing this man. He's got enough people coming and going from there. I think he should make a pretty [70] good living by closing at twelve-thirty. I don't think we're asking too much. I know I wouldn't want the show every night coming out of my place at two, three o'clock in the morning. I think twelve-thirty is late enough.

Why don't we give it a shot? Then we'll come back at a later date and we'll take some more on it. What I'd like to ask you, please, let's support the people in that neighborhood as we've supported them in other neighborhoods and let's give them a vote of confidence. Let's stick with the neighbors. Thank you.

UNIDENTIFIED SPEAKER: I thought we voted a midnight closing?

BODY: No!

MODERATOR: Now, the question before the house is a vote on indefinite postponement. That requires a simple majority vote. Will all those in favor of indefinite postponement of this article kindly say aye?

BODY: Aye.

MODERATOR: Those opposed?

BODY: No!

Appendix A

[71] MODERATOR: It is not a vote. Now, we have to take a vote to — what?

MR. MAGGIONI: The original article has to be re-voted.

MODERATOR: Yes, we have to re-vote the original article. That — the vote comes — and the vote comes on the twelve-thirty closing, that the article be so voted in that manner.

Will all those in favor please say aye?

BODY: Aye.

MODERATOR: Contra minded? It is a vote. Thank you very much. That was good debate.

Now, let's move to — Yes? Mr. Boylan.

MR. GEORGE BOYLAN: I'm reluctant to do this, but obviously, we're not going to finish Town Meeting by ten-thirty this evening. The Town Counsel indicted this would be an appropriate time to move for reconsideration. What I'd like to do is move for reconsideration of Article 12, and hopefully, with a second, I'd like to explain why the motion for reconsideration.

MODERATOR: Is there a second? There is a second. Would you tell us why you want reconsideration

* * *

Appendix A

A TRUE COPY ATTEST:
s/ Margaret M. McGowan
MARGARET M. McGOWAN
TOWN CLERK

DEDHAM FINANCE COMMITTEE

TOWN OF DEDHAM

Special Town Meeting

Dedham Finance Committee

MONDAY, NOVEMBER 6, 1989

7:00 P.M.

DEDHAM HIGH SCHOOL AUDITORIUM

* * *

[Commencing at Page 48] THE MODERATOR: No.

MR. REID: Okay.

THE MODERATOR: We'll vote the original motion.

MR. REID: Okay.

THE AUDIENCE: Question.

THE MODERATOR: Is there further discussion? There

being none, the vote comes on the original motion of the Finance Committee that it be so voted.

Will all those in favor, please say aye.

(Aye)

THE MODERATOR: Contrary minded?

(No)

THE MODERATOR: It is a vote, thank you . Article Four, is there discussion on Article Four? There is a gentleman here, I believe, from National Amusements, Mr. Towey, he has requested that he be permitted to speak. He is not a District Representative and, in fact, I believe he is not a resident of the Town of Dedham, is that correct?

MR. TOWEY: That is correct.

THE MODERATOR: It requires a vote of the Town Meeting.

Will all those in favor of having Mr. Towey [49] speak, kindly say aye.

(Aye)

THE MODERATOR: Those opposed? Go ahead, and please identify yourself. Thank you.

MR. TOWEY: Thank you, Mr. Moderator, and ladies and gentlemen of the Town Meeting, thank you. My name is William

Appendix A

Towey. I am the Senior Vice President of National Amusements, Incorporated, with offices here in Dedham, and we own and operate the Showcase Cinema which, basically, this Article refers to.

I would like to state that our company is in opposition to this Article, and state some of the reasons why we feel it should not be passed and voted upon. One of those certainly is it will create a severe economic impact to the operation of our business, which has been in Dedham for a good number of years now; in fact, I think we opened the cinema in 1974, '73, somewhere along in there.

We have always worked out any problems that our neighbors in the Town of Dedham felt that we had, and I think we've done a pretty good job of working out any of those situations that have developed with the [50] operation of our business in Dedham. We've always operated late shows on the Friday and Saturday evenings since we have been operating this cinema, and had no objection to this until just recently. The Bylaw discriminates against us, and that's notwithstanding the changes that were made in the previous Bylaw, which was ruled, I believe, the word to be "unconstitutional" by the Attorney General's Office. The purpose, however, of the new Bylaw, which you are voting on tonight, still is the same, and that is to single out the Showcase Cinema and to curtail its operational hours.

We have discussed on many occasions and agreed to implement alternative measures as a way of dealing with all of the concerns, I think every concern, that the residents and the City have had with the operation of our cinema in Dedham. In view of the history of our operation and the record of our

operation, and I think that can be attested to by the Police Department, and frankly, as well by the selectmen, that I feel this Article is an unfair restriction on the operation of our business.

I might refer just a little bit, if I may, to [51] the prior attempt at passing such a restriction. The fact that it was disproved by the Attorney General's Office, while I do disclaim any legal knowledge or understanding of the legalities of the matter not being an attorney, I might say that the net effect of this law is to do basically what was proposed by the prior law which was ruled illegal, and I'm certain you are concerned, and I know I am concerned, as to the legality of this Article as well.

I requested a well respected Massachusetts' law firm to send me an opinion of this newest Article, and I have that opinion with me; the firm is Glaston and Snow, they have concluded that the Bylaw is also unlawful and improper. And if I may just take one minute I'll read some excerpts from that. I'd be glad to make this statement from Glaston and Snow available to the Board of Selectmen if they so desire. But the basic of the content of this letter, which is addressed to me, "It is our view that Article Four is subject to Constitutional attack, since at least some of the activities covered by the proposed Bylaw are protected by the First Amendment to the United States Constitution," and they go on to quote some various [52] situations which have come up before the courts, and the regulations and so forth which I won't bore you with on that. It goes on further to say Article Four is likely to be judged impermissibly vague, and further the broad scope of Article Four is unlikely to pass muster under the Supreme Courts' stringent time, place, and manner restrictions. Apart from what the attorneys say and what the Attorney General and the Courts ultimately will decide, I feel, again being repetitive, that the law is unfair.

Appendix A

We all know the real purpose of this law, and that is to force the Showcase Cinema to close early on Friday and Saturday nights. The Bylaw really is designed to have an impact only, only, upon our operation in Dedham. And, ironically, although the laws in the Town of Dedham say that the bars must close at one a.m., we all know, and the laws also read that the patrons do not have to leave the bars until two a.m., yet for some reason we do not want people to sit in a movie after one a.m., maybe have some popcorn, but it's okay if they finish their drinks in the bars. I don't quite understand that logic, it's clearly discriminatory.

[53] It's not our company's desire to take issue with the Town on this law, but in view of the potential economic impact, and certainly I've sat here through the meeting tonight and I've heard of the severe economic problems, not only the Town of Dedham, I happen to live in the Town of Norwood right next door and I hear the same problems in my own town, and we're talking here of instituting an Article that would have severe economic impact on the business in which I work, on a business which happens to be in the Town of Dedham, I think a business that is well respected in the Town of Dedham, and yet we're talking severe economic impact, not only to our company, but possibly and probably to the Town of Dedham as well.

It's not, as I say, the intention of our company to go to war, so to speak, with the Town of Dedham, but we also do not want to have severe economic impact on our business, and, frankly, I would rather think we wouldn't cause severe economic impact on the Town of Dedham as well. But, at any rate, I'm certain that whatever would happen it would be a severe and unwelcome expense on both the part of our company and upon the Town. And I cannot help but feel, and I have [54] made this statement to our neighbors during many, many meetings with them, why pay the

lawyers to deal with our problems if we as neighbors can work out those problems to the satisfaction of all.

I think we have solved a lot of our problems. Just to point out a few things, we have policemen stationed at the corner of Robinwood and Elm. We have signal controls manually operated by police officers hired by Showcase Cinema at the intersection of Route 1 and Elm Street. We have police patrol the neighborhoods. It's probably the best protected neighborhood in the town of Dedham, or maybe anywhere in the suburbs of Boston, at Showcase Cinema's expense, I might add.

We have special screen announcements asking our patrons to use rear exit ways to get them away from using the intersection of Elm Street in Dedham; again at the request of the Town of Dedham we complied and we've been doing this for years. We have our own personnel picking up trash that's left by, not just our patrons, but by other people using Elm Street, and they pick up the trash along the properties of our residential neighbors. We have meetings, as I had [55] mentioned, on an ongoing basis with the neighborhood committee.

And I just want to add as a finale, we're spending $250,000.00 annually for police who work at our cinema, work on our parking lot, and work on the neighborhood areas, including the parking lot by Hillary's, including the intersection of Robinwood and Elm Street, the intersections of Route 1 and Elm Street, and a patrol van, as well, that patrols the neighborhoods on Friday and Saturday nights in and surrounding the Showcase Cinema. I doubt — No, I know, there are no other businesses in the Town of Dedham that cooperate with the citizens of the Town of Dedham the way our cinema and our company does. I respectfully ask that you vote to reject this Article. Thank you.

THE MODERATOR: Thank you. Mrs. Keogh, please.

MRS. KEOGH: Thank you, Mr. Moderator, Finance Committee Members, Town Meeting Members and interested residents of our Town of Dedham, it is the intention of your Board of Selectmen through this particular Article to achieve a uniform closing for all establishments and/or businesses which are licensed by the Board of Selectmen; that is a closing between one a.m. and six [56] a.m. We really feel that those five hours should serve as respite, if you will, for the residents of our town; sleepy time in common language. And we hope that you will support the position of the Board of Selectmen which is, in fact, the recommendation of the Finance Committee. Thank you very much.

THE MODERATOR: Yes, Mr. Johnson.

MR. JOHNSON: Ladies and gentlemen of the Town Meeting, this is my District, District Six. I don't really feel this Article is very discriminatory. To be quite honest with you, if somewhere here can tell me where between one and six you can buy a gallon of milk, loaf of bread in the Town of Dedham, I really want to know.

What we have here is a basic closing from one to six, and to leave the theatre open when we can't open Curtis' Market or Nancy's — Well, Nancy's not there, but any of these other stores, would be reverse discrimination on those people in that neighborhood. It's a very basic issue here, the Town's closed from one to six or it's not closed from one to six. We voted to close earlier, maybe perhaps that the wording was wrong. I would hope that everyone would support one to six for [57] everything and we'll take our shot with the Attorney General. Thank you.

Appendix A

THE MODERATOR: Thank you, Mr. Johnson. Anybody else like to speak on the Article? There being no further discussion the question now comes on the original motion of the Finance Committee that it be so voted.

Will all those in favor, please say aye.

(Aye)

THE MODERATOR: Those opposed?

(No)

THE MODERATOR: It is a vote.

Now, ladies and gentlemen, we've come to the end of our business and there is a motion before the House by Mrs. McGowan that this Special Town Meeting is hereby dissolved, is there a second to that motion, please?

(Seconded)

THE MODERATOR: All those in favor, please say aye.

(Aye)

THE MODERATOR: Contrary minded? It is a vote. Thank you. Thank you for your time and patience.

*

(Whereupon, the Town Meeting concluded at 9:05 p.m.)

Appendix A

[58] CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

I, KAREN MC ALLISTER, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That the testimony hereinbefore set forth, was recorded by me and transcribed by me; and that such is a record of the testimony given.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 1st day of December, 1989.

s/ Karen McAllister
Karen McAllister
Notary Public

APPENDIX B — EXCERPT FROM THE RECORD: FEBRUARY 5, 1993 LETTER OF PETITIONER'S COUNSEL

FINNEGAN AND STANZLER, P.C.
ATTORNEYS AT LAW
THE CLAFLIN BUILDING
TWENTY BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 523-2500

February 5, 1993

Joyce Frank, Esq.
Kopelman and Paige, P.C.
101 Arch St.
Boston, MA 02110-1137

Re: National Amusements, Inc. v. Town of Dedham
U.S. District Court No. 90-104724

Dear Joyce:

Pursuant to the Court's December 8, 1992, Scheduling Order, I am forwarding to you National Amusement's reply to the Town's proposed stipulations of fact.

I want you to know that since the Town of Dedham decided to push this case forward a few months ago, I have done some rather serious investigation as to the Town's motives in passing the ordinance and its impact upon Showcase Cinemas' patrons. I am deeply disturbed to find that the Town apparently passed the ordinance for purposes of infringing Showcase Cinemas' right to exhibit films to black patrons.

there may well be extensive press coverage and public scrutiny embarrassing to Town officials.

Cordially,

s/ Theodore E. Dinsmoor
Theodore E. Dinsmoor

TED/jmw 4-36
Enc.

APPENDIX C — EXCERPT FROM THE RECORD: BYLAWS RESTRICTING LATE NIGHT COMMERCIAL ACTIVITY

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

MARGARET M. MCGOWAN
ASSISTANT TOWN CLERK

JOHN T. CAREY
TOWN CLERK

TEL. 326-1638

May 1976

ANNUAL TOWN MEETING Third night April 26, 1976

ARTICLE TWENTY-EIGHT: By the Selectmen: To see if the Town will vote to amend Chapter XIII (Police Regulations), of the Revised By-Laws of the Town of Dedham by adding a new section at the end thereof as follows:

"Section 42. No person shall sell at retail between the hours of 12 midnight and 6:00 A. M. any food.

The term food as used in this by-law shall include any article or commodity however, stored or packaged, intended for human consumption, and shall include alcoholic beverages to be consumed off the premises at which they are sold, unless any other law or permit or license granted to the seller of such beverages shall otherwise provide.

This by-law shall not apply to the sale of food or alcoholic beverages to be consumed on the premises at which they are sold or to be consumed off the premises on which they are sold when such sale is by a licensed common victualer primarily engaged in the sale of food to be consumed on such premises.

Appendix C

Persons found guilty of violating this section shall pay a fine of $50. For purposes of this by-law each separate sale shall be deemed a separate offense. In the event of sale of several items or articles at one time to one customer, only one sale shall be deemed to have taken place.

Section 42A. No store or place of business engaged in the retail sale of food shall be open for the transaction of retail business between the hours of 12 midnight and 6:00 AM.

This by-law shall not apply to the sale of food or alcoholic beverages to be consumed on the premises at which they are sold or to be consumed off the premises on which they are sold when such sale is by a licensed common victualer primarily engaged in the sale of food to be consumed on such premises.

This by-law shall not be deemed to repeal or replace Section 42 of Chapter XIII of the Revised By-Laws, and each by-law shall be deemed separately enforceable. An adjudication that Section 42 or Section 42A of Chapter XIII of the Revised By-Laws or any part of either such section is unconstitutional or invalid shall not operate to affect the constitutionality or validity of the other by-law or any part thereof which can be given effect without the provision deemed unconstitutional or invalid.

Violators of this Section shall be subject to a fine of $50. for each violation. In case of continuing violation, every calendar day upon which a store shall remain open shall be deemed a separate offense."

It was so VOTED. (Yes - 130, No - 81)

Appendix C

A true copy attest:

s/ Margaret M. McGowan
Margaret M. McGowan
Town Clerk

Appendix C

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

TEL. 326-1638

MARGARET M. McGOWAN
ASSISTANT TOWN CLERK

JOHN T. CAREY
TOWN CLERK

SPECIAL TOWN MEETING — April 9, 1979

ARTICLE EIGHT: By the Board of Selectmen. To see if the Town will vote to amend Paragraph one (1) of Section 42A of Chapter XIII of the Revised By-Laws of the Town of Dedham as follows:

"No store or place of business engaged in the retail sale of any commodity shall be open for the transaction of retail business between the hours of 12 midnight and 6:00 A. M."

On motion of the Board of Selectmen, it was VOTED: That it be so voted with the addition of the phrase "except fuel products" after the word "commodity".

A true copy attest:

s/ Margaret M. McGowan
Margaret M. McGowan
Town Clerk

Appendix C

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

TEL. 326-1638

MARGARET M. McGOWAN
TOWN CLERK

SPECIAL TOWN MEETING, NOVEMBER 6, 1989

ARTICLE 4: By the Board of Selectmen:

To see if the Town will vote to amend Chapter XIII of the Revised By-Laws of the Town of Dedham, entitled, "Police Regulations" by adding a new section at the end thereof, as follows:

> Section 57.
> Unless otherwise restricted, no holder of a license issued by the Town of Dedham, pursuant to Massachuetts General Laws, Chapter 140, Sections 177A, 181 and 183A, shall permit any activity licensed thereunder to be conducted between the hours of 1:00 A.M. and 6:00 A.M.

It was so VOTED. UNANIMOUS VOTE

A true copy attest:

s/ Margaret M. McGowan
Margaret M. McGowan
Town Clerk

Appendix C

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

TEL. 326-1638

MARGARET M. McGOWAN
ASSISTANT TOWN CLERK

JOHN T. CAREY
TOWN CLERK

May 16, 1980

ANNUAL TOWN MEETING 3rd night May 12, 1980

ARTICLE THIRTY-FIVE: By the Sign By-Law Committee. To see if the Town will vote to amend the Revised By-Laws by inserting the following new chapter to be numbered in consecutive order following the last numbered chapter:

Chapter — Sign Code.

1. Definitions

SIGN shall mean any device designed to inform or attract the attention of persons not on the premises on which the device is located. Any exterior building surfaces which are internally illuminated or decorated with gaseous tube or other lights are considered signs. The following, however, shall not be considered signs within the context of this bylaw:

a. flags and insignia of any government except when displayed in connection with commercial promotion;

b. legal notices, or informational devices erected or required by public agencies;

c. standard gasoline pumps bearing thereon in usual size and form the name, type, and price of gasoline;

d. integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or parts internally illuminated or decorated with gaseous tube or other lights;

e. on-premise devices guiding and directing traffic and parking, not exceeding two (2) square feet in area, and bearing no advertising matter;

f. on awnings or similar devices, lettering not exceeding 3" in height, or symbols not exceeding four square feet in area.

SIGN AREA shall mean the area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matter shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area.

TEMPORARY shall apply to a period of thirty (30) days or to the period to which the information on the sign is relevant, whichever is less.

2. General Regulations

a. Permits. No sign shall be erected, enlarged, or

structurally altered without a sign permit issued by the Building Inspector, unless specifically exempted from this requirement by Section 1. Permits shall only be issued for signs in conformance with this Bylaw. Permit applications shall be accompanied by two prints of scale drawings of the sign, supporting structure/method of attachment, and location. A copy of any relevant Special Permit shall also accompany the application.

b. Maintenance. All signs shall be maintained in a safe and neat condition to the satisfaction of the Building Inspector.

c. Nonconformancy. Any nonconforming sign legally erected prior to the adoption of this provision, or any amendment hereto, may be continued and maintained, except that all off-premises signs must be in conformance with Section 2.e (below) by June 1, 1985. Any sign rendered nonconforming through change or termination of activities on the premises shall be removed within thirty days by order of the Building Inspector. No existing sign shall be enlarged, reworded, redesigned, or altered in any way unless it conforms with the provisions contained herein. Any sign which has been destroyed or damaged to the extent that the cost of repair or restoration will exceed one-third of the replacement value as of the date of destruction shall not be repaired, rebuilt, restored, or altered unless in conformity with this bylaw.

d. Prohibitions

(1) No sign shall be lighted, except by a steady, stationary light, shielded and directed solely at or internal to the sign.

(2) No illumination shall be permitted which casts

glare onto any residential premises or onto any portion of a way so as to create a traffic hazard.

(3) No sign shall be illuminated in any district beyond the normal business hours of the establishment to which it pertains.

(4) No sign having red or green lights shall be erected within sight of a traffic signal unless approved as non-hazardous by the Chief of Police.

(5) No illuminated sign shall hereafter be constructed or installed where the illumination shall be in motion or shall otherwise race or flash, blink, rotate, oscillate, or increase or decrease in intensity of illumination, nor shall sign be constructed so as to present the visual effect of movement or oscillation, vibration or change in illumination. This prohibition against moving or blinking lights shall not apply to illuminated hands or numerals of clocks and thermometers or signs erected to protect the safety of the public against dangerous conditions.

(6) No pennants, streamers, advertising flags, spinners, or similar devices shall be permitted, except as allowed by the Board of Selectmen.

(7) No signs shall be attached to motor vehicles, trailers, or other movable objects regularly or recurrently located for fixed display, whether on public or private property.

(8) Corner visibility shall not be obstructed.

e. Off-Premises Signs. Only signs pertaining exclusively to the premises on which they are located or to products, accommodations, services, or activities on the premises shall be allowed, except that an off-premises directional sign, designating the route to an establishment not on the street to which the sign is oriented, may be erected and maintained within the public right-of-way at any intersection if authorized by the Selectmen, or on private property if granted a Special Permit by the Zoning Board of Appeals. Such signs shall be authorized only upon the authorizing agency's determination that such sign will promote the public interest, will not endanger the public safety, and will be of such size, location, and design as will not be detrimental to the neighborhood. At locations where directions to more than one establishment are to be provided, all such directional information shall be incorporated into a single structure. All such directional signs shall be unlighted and each shall be not over four square feet in area.

f. Temporary Signs. Temporary signs shall be allowed as provided below, and provided that they comply with the following:

(1) Unless otherwise specified in this bylaw, temporary signs must comply with all applicable requirements for permanent signs, including issuance of a sign permit.

(2) Temporary signs not meeting requirements for permanent signs may, if allowed below, advertise sales, special events, or changes in the nature of an operation, but shall not otherwise be used to

advertise a continuing or regularly recurring business operation, and shall be removed promptly when the information they display is out of date or no longer relevant.

3. Permitted Signs

a. Residence Districts. The following signs are allowed in Residence Districts as well as in all other districts. In a Residence District, no part of any sign shall be more than fifteen (15) feet above ground level.

(1) One sign, either attached or free-standing, indicating only the name of the owner or occupant, street number, and permitted uses or occupations engaged in thereon, not to exceed two square feet in area. Requires no sign permit.

(2) One sign oriented to each street on which the premises have access, either attached or freestanding, pertaining to an apartment development, such sign not to exceed ten square feet in area.

(3) An off-premises directional sign as provided at Section 2.e.

(4) Temporary signs of not more than twelve square feet in area, erected for a charitable or religious cause, requires no sign permit if removed within thirty (30) days of erection.

(5) One temporary unlighted real estate sign advertising the sale, rental, or lease of the premises or subdivision on which it is erected, such sign not to be larger than six (6) square feet, requires no sign permit.

(6) One temporary unlighted sign not larger than twenty-five (25) square feet indicating the name and address of the parties involved in construction on the premises, requires no sign permit. Said sign to be removed immediately upon completion of the project.

b. Shopping Centers and Multi-Use Buildings.

(1) Signs as permitted in Residence Districts, except that temporary real estate signs may be as large as ten square feet.

(2) Signs attached to a building or its canopy, parallel with the facade, and not projecting above the roof line, advertising the name of a firm, or goods or services available on the premises, provided that the total area of all signs erected on any wall by any occupant may not exceed 20% of the portion of that wall area assigned to that occupant. In no case shall any occupant's signs total more than 200 square feet facing any single street.

(3) For any retailing complex comprising three or more enterprises on a single lot and 50,000 sq. ft. floor area or more, one free-standing sign for each street on which the development fronts,

containing the name or other identification of the area occupied by the complex. Each sign shall be no larger than one hundred (100) square feet. Such sign shall not be located within five feet of any property line, or within twenty-five feet of the line of any public way, and no part of the sign shall be more than twenty-five (25) feet above ground level.

(4) Temporary unlighted signs inside windows, occupying not more than 30% of the area of the window, requires no sign permit.

c. Business Districts, exclusive of Shopping Centers and Multi-use Buildings.

(1) Signs as permitted in Residence Districts, except that temporary real estate signs may be as large as twenty-five (25) square feet.

(2) Signs attached flat against the wall or fixed canopy of a building, advertising the name of a firm, or goods or services available on the premises, provided that the total area of all signs on any side of a building may not exceed twenty (20%) percent of the area of the side of the building and in no case more than one hundred (100) square feet. Small individual signs not exceeding two square feet in area, on windows and identifying the occupants therein, shall be excluded from the above limitations.

(3) Signs projecting from a building over a public right-of-way shall not be permitted.

(4) Temporary unlighted signs inside windows, occupying not more than 30% of the area of the window, requires no sign permit.

d. Limited Manufacturing and Limited Manufacturing B Districts.

(1) Signs as permitted in Residence Districts, except that temporary real estate signs may be as large as twenty-five (25) square feet.

(2) Signs attached flat against the wall or canopy of a building, or projecting not more than six (6) feet above such wall, advertising the name of the firm or goods or services available or produced on the premises; provided that the total area of all such signs does not exceed twenty (20) percent of the area of the side of the building to which they are attached or two hundred (200) square feet, whichever is the larger.

(3) One free-standing sign, containing the name or other identification of the use on the property, for each street on which the property fronts, each sign limited to an area of one hundred (100) square feet. Such sign shall not be located closer than five (5) feet to any property line or the line of any way, and no part of any such sign shall be more than twenty-five (25) feet above ground.

(4) In LM and LMB only, temporary unlighted signs inside windows, occupying not more than 30% of the area of the window, requires no sign permit.

Appendix C

4. Billboards

No permit for the erection of new billboards shall be granted. All existing billboards shall be removed upon expiration of their respective special permits.

5. Appeals Process

Any of the above restrictions and regulations may, upon satisfactory proof that such waiver will not substantially derogate from the public good, be waived by a 4/5ths vote of the Zoning Board of Appeals, with the exception of: sign area, setback from public ways, and projecting signs overhanging public ways.

6. Administration and Enforcement

The Inspector of Buildings shall execute the provisions of this by-law, except where otherwise provided, and in so doing shall have the same powers as are provided for the execution of the State Building Code.

It shall be the duty of the Inspector of Buildings to enforce this by-law, and for this purpose he may make criminal complaints or apply for injunctions to any court of competent jurisdiction.

VOTED: That the above amendment be adopted subject to the addition of the following:

following section 2.d (8)

(9) Political Signs for any national, state or town election will be allowed for a period of only thirty

(30) days prior to the election and must be removed within seventy-two (72) hours after the election day.

following section 3.1 (6)

(7) Temporary, unlighted signs advocating the election, promotion, or defeat of a candidate for political or organizational office shall require no sign permit, provided that no such sign shall exceed nine square feet in area.

On motion of Mr. Poirier, the following amendment was VOTED:

following section 3.a (7)

(8) Temporary, unlighted signs expressing personal beliefs and opinions as provided for by Article I of the United States Constitution "Freedom of Speech", shall require no permit, provided that no such sign shall exceed nine square feet in area.